

University of Warwick institutional repository: <http://go.warwick.ac.uk/wrap>

A Thesis Submitted for the Degree of PhD at the University of Warwick

<http://go.warwick.ac.uk/wrap/1170>

This thesis is made available online and is protected by original copyright.

Please scroll down to view the document itself.

Please refer to the repository record for this item for information to help you to cite it. Our policy information is available from the repository home page.

Institutional Racism, the Police and Stop and Search: A Comparative Study of Stop and Search in the UK and USA.

by

Rebekah Delsol

A thesis submitted in partial fulfilment of the requirements for
the degree of Doctorate of Philosophy in Sociology.

University of Warwick, Department of Sociology

July 2006

TABLE OF CONTENTS

.....

Title	i
Table of contents	ii
Acknowledgements	v
Declaration	vi
Abstract	vii
Chapter 1: Introduction	1
A note on terminology	6
Chapter 2: Institutional Racism	7
Historical origins and evolving meanings	9
1960s America	9
Institutional racism in 1970s and 80s Britain	20
The Macpherson Report	24
The problem with institutional racism	26
Different levels of analysis	26
Conflation of beliefs, actions and processes	28
‘Unwitting prejudice’	29
A definition too vague to apportion responsibility ...	32
Outcomes and empirical proof	33
What white people think and do to black people	34
Conclusion	36
Chapter 3: Stop and search in the UK	38
Stop and search prior to PACE	39
Police and Criminal Evidence Act 1984 (PACE)	42
The limitations of PACE	46
Reasonable suspicion	47
Consent and voluntary stops	49
Record-keeping and supervision	50
Legal rules or something else?	51
Patterns of stop and search use	54
Measuring the ‘effectiveness’ of stop and search	55
Who is stopped?	56
The Lawrence Inquiry and Macpherson Report	62
Home Office research	67
Eight years after Macpherson	78
Frequency and patterns	82
Available population research	86
Further attempts at regulating stop and search	93
Conclusion	100
Chapter 4: Stop and search in the US	101
Racial profiling	103
Protection under the Constitution	106

<i>Terry v. Ohio</i>	108
Weakened protection – From <i>Terry</i> to <i>Whren</i>	109
Limitations of <i>Terry</i>	109
Failure of Constitutional protection	112
Consent	116
<i>Whren v. United States</i>	118
Patterns	119
New Jersey	119
Maryland	120
New Jersey II	121
New York City	123
Costs	125
The methodology debate	127
Characteristics of stops	128
The ‘denominator problem’	130
Explanations of stop patterns	134
‘Good policing’	134
Officer decision-making	139
Institutional issues	144
Old practices, new targets	146
Regulation	147
 Chapter 5: Methodology	 151
The negotiation process	152
The research setting	157
Force 1: Amberham Police Service	157
Force 2: Brookshire Police Service	158
Force 3: New Town Police Department	159
Force 4: Greenville Police Department	160
Research execution	162
Interviews	162
Observations	166
Acceptance and access	167
An ethical dilemma	176
Analysis of the data	178
 Chapter 6: Analysis of UK findings	 180
National policy context	181
Part I: Amberham Police Service	185
A. Area A	186
General stop and search use	190
Section 60	197
B. Area B	198
C. Area C	203
Explaining the disparity	210
Special operation	214
The operation in Area C	219
 Part II: Brookshire Police Service	 223

	Stop and search use	230
	Section 60	234
	Conduct	236
	Summary	236
Chapter 7:	Analysis of US findings	240
	Part I: New Town Police Department	241
	State context	243
	A. Area A	243
	B. Area B	254
	C. Area C	261
	Explaining stop disparities	264
	Part II: Greenville Police Department	269
	A. Area A	270
	B. Area B	275
	Summary	278
Chapter 8:	Conclusion	281
	Stop and search use	281
	The law	281
	Consent and pretext stops	283
	Suspicion	284
	Police property	285
	Intelligence	287
	Area-based suspicion	287
	Local context	289
	Police objectives/ Police officers as actors	290
	Institutional racism	292
	List of references	297
	Appendices	317
	Appendix 1: Table of main UK stop and search powers	317
	Appendix 2: Summary of US racial profiling studies	320
	Appendix 3: Interview and observation breakdown	324
	Appendix 4: Interview Schedules	333
	Appendix 5: U.S. jurisprudence on stop and search	337

ACKNOWLEDGEMENTS

.....

This project would not have been possible without the help and assistance of many people.

I would like to record my gratitude to Professor Lee Bridges and Dr. Bob Carter who supervised my research. Their insight, perspectives and support they provided throughout was a constant source of encouragement.

I would also like to thank Dr. Lou Kushnick, my undergraduate tutor. It was his faith and enthusiasm that set me on this journey.

I am enormously grateful to the many police officers who took part in this study, without whose help this project would not have been possible. I hope that I have done them justice, and that I have respected as far as possible their anonymity and privacy.

Finally, and most importantly, I would like to thank my long suffering friends and family! Their pride in this achievement makes all the effort worthwhile.

DECLARATION

I declare that this thesis is entirely my own work, except where stated, and confirm that it has not be submitted for the fulfilment of a degree at any other university.

ABSTRACT

This research examines the utility of the concept of institutional racism in explaining racial disparities in stop and search practice in the UK and US.

The concept of institutional racism was introduced in 1960s America. The concept was politically powerful in expanding existing understandings of racial inequalities which focused on individual prejudice and cultural pathology, to showing how racist discourses can become embedded in the structures of social formation. There were a number of analytical weaknesses inherent in the term at its conception. The concept has been utilized at various points of history in the US and UK. The 1999 Macpherson Report brought the concept of institutional racism back to popular usage in the UK, particularly in discussions around discrimination and policing.

Macpherson took as evidence of the existence of institutional racism the continued disparities in stop and search use. The power to stop and search people in the street suspected of criminal activity has long been a feature of British and American policing. Research in both countries has continually shown that these powers are being disproportionately exercised against ethnic minorities. Thus this thesis explores whether the concept is useful in explaining disproportionate stop and search outcomes. The research is based on a study of police officers from two forces in the UK and two police departments in the US. It uses semi-structured interviews, observations and draws on official policy documents and statistics. The purpose of the research is to gain an understanding of the circumstances and decision-making by officers as they conduct stop and search and to understand the context in which these decisions take place.

The findings reveal that discriminatory outcomes in stop and search are the product of not only the actions of individual officers but also national and local policies and practices. These policies and practices are devised and implemented by social actors. The disproportionate outcomes not only result from racism but also prejudice based on class and gender. The concept of institutional racism reifies individual institutions and obscures the role of social actors in institutions, who shape the policies and practices of an institution. Without an understanding of the contexts in which people draw on race ideas and what features of their social position allows them to assert these ideas into the policies and practices of an institution we are unable to apportion responsibility and build reform agendas. Thus institutional racism fails to explain the disparities in stop and search use in the UK and US.

INTRODUCTION

I actually believe that the media is guilty of institutional racism in the way they report deaths. That death of the young lawyer was terrible, but an Asian chap was dragged to his death, a woman was chopped up in Lewisham, a chap shot in the head in a Trident murder – they got a paragraph on page 97.

Sir Ian Blair, Metropolitan Police Commissioner,
26th January 2006.

The quotation above is from a newspaper interview given by Sir Ian Blair, Commissioner of the Metropolitan Police Service. What is remarkable about the quotation is not the allegation that the media is institutionally racist in its reporting of murders but that the Commissioner has embraced the concept and seen fit to deem other institutions institutionally racist. Only seven years previously, at the time of the publication of the Macpherson Report of the inquiry into the investigation of the murder of Stephen Lawrence, the then Commissioner, Paul Condon accepted with reservation that the police service were institutionally racist and force commanders across the country, such as the Commander of the Greater Manchester Police flatly denied the allegation. Over the preceding seven years, the concept has become ubiquitous in debates about racism and discrimination in the police service and British society more generally.

The concept of ‘institutional racism’ was devised by Stokely Carmichael and Charles Hamilton in 1967. The term expanded the existing understanding of racial inequalities which focused on individual prejudice and cultural pathology (Myrdal 1964, Park 1964),

lacking an analysis of structural inequalities. The concept was to include not only beliefs but also all actions and processes, including those both individual and institutional, which have the consequence of creating and sustaining the subordination of black people. The emphasis was placed on the outcomes or consequences of these beliefs, actions and processes in creating and sustaining racial disadvantage. The resulting concept of institutional racism emphasizes a number of salient features. Institutional racism results from the normal everyday processes and operation of institutions, it is evident in both single institutions and as an outcome of interrelationships between institutions, the intentions of the people within the institutions are irrelevant, it includes a notion of white privilege and is identified through the analysis of outcomes and consequences. The concept has since been used and expanded on both sides of the Atlantic and has been politically powerful at points in the struggle against racism and inequality. Yet, from the conception of the term there were ambiguities and contradictions that have weakened its analytical power. The term has been conceptually stretched over different levels of analysis, covering broad structural processes at the level of social formation, single institutions and individual prejudices. Through asserting that racism can be covert and unintentional, it sidesteps issues of causality and culpability and conflates racism as the sole cause of black disadvantage, ignoring the impact of other processes such as class and gender.

It is the emphasis on outcome and the move away from focusing solely on individual racist attitudes that has resulted in the concept of institutional racism being used to explain the racial disparities that are evident in stop and search figures. The power to stop and search people in the street suspected of criminal activity has long been a feature of British policing. Prior to the introduction of the Police and Criminal Evidence Act 1984 (PACE),

the legal powers to stop and search people on the street had developed on an ad hoc basis contained in incoherent local and national legislation. PACE introduced a national power to stop and search ‘any person or vehicle’ and ‘anything which is in or on a vehicle, for stolen goods or prohibited articles’ and ‘to detain a person or vehicle for the purpose of a search’ (PACE s1 (s)). The exercise of the stop and search powers has been at the forefront of research in both Britain and America. It epitomises the discretionary powers available to police officers and thus provides opportunities for discriminatory treatment. Studies have consistently showed that the powers have been used in a discriminatory manner (Young 1994, NARCO 1997, FitzGerald 1999, Quinton, Bland et al. 2000) and official statistics show disparities in the numbers of ethnic minorities stopped (Home Office 2006). Thus stop and search has become the ‘litmus test’ for equality in policing.

The primary aim of this thesis is to examine the utility of the concept of institutional racism in explaining racial disparities in stop and search use in the UK and US.

The thesis begins with exploring the concept of institutional racism. Charting the historical development of the concept in America, noting the ambiguities present from its conception at a particular point in the struggle against racism. It then observes how the concept was adopted in the UK during the 1970s and ‘80s. It shows how it was used in two ways; firstly, to describe how racism had become entrenched in the apparatus of the UK state and the structures of society and secondly, as a descriptive term to focus on racist outcomes as the result of the normal workings of institutions with the possible absence of a racist ideology. The 1999 Macpherson Report brought the concept of institutional racism back to popular usage, particularly in discussions around discrimination and policing. The chapter

ends with a critique of the definition of institutional racism used by Macpherson, which highlights the inherent problems with the concept.

Chapter 3 provides an overview of the powers to stop and search in the UK. It considers the various attempts made to strengthen the administrative controls, through the re-defining of the threshold of reasonable suspicion and the recording and monitoring of stops. It then reviews the literature looking at the patterns of disproportionate stop and search use and considers the explanations given for these such as ethnic differences in offending and the idea of 'available populations.' Finally, it notes the move away from justifying the disparities towards improving accountability structures, making stop and search intelligence-led and improving officers' conduct during stops.

Chapter 4 provides a socio-legal review of the use of stop and search in the US. Stop and search there is defined by the law and controlled by the courts. This chapter explores the legal context under which stop and search operates noting the failure of the court decisions to provide Constitutional protection, hence facilitating discriminatory practices. Despite the different system of control, emerging evidence shows that the powers are being disproportionately targeted at minority groups. Research in the US had focused on developing methodologies to prove or disprove the existence of racial profiling in stop and search so there remains very little qualitative data explaining the reasons behind the disparities.

The research for this thesis is based on a study of police officers from two forces in the UK and two police departments in the US. I used semi-structured interviews, observations and drew on official policy documents and statistics. The purpose of the research is to gain an

understanding of the circumstances and decision-making by officers as they conduct stop and search and to understand the context in which these decisions take place. Chapter 5 thus explains the methodology used in greater detail and explores issues of access and acceptance.

Chapters 6 and 7 analyses the data that was collected during the study in the UK and US. Both chapters begin by laying out the national policy agenda and national and state legal framework in each country and move on to explore how these frameworks are translated into local force practice. They look in detail at the use of stop and search in three areas within the main forces studied in both countries, exploring how practice is impacted by local working practices, the community context and the personal agendas of individual officers. The findings from this area are then compared to stop and search use in the second forces.

The research findings are summarized in the final chapter, which revisit in general terms the points raised earlier in the thesis. The findings reveal that discriminatory outcomes in stop and search are the product of not only the actions of individual officers but also national and local policies and practices. These policies and practices are devised and implemented by social actors. The disproportionate outcomes not only result from racism but also prejudice based on class and gender. The concept of institutional racism reifies individual institutions and obscures the role of social actors in institutions, who shape the policies and practices of an institution. Without an understanding of the contexts in which people draw on race ideas and what features of their social position allows them to assert these ideas into the policies and practices of an institution we are unable to apportion

responsibility and build reform agendas. Thus institutional racism fails to explain the disparities in stop and search use in the UK and US.

A note on terminology

I believe that race is a social construct. Sadly, ideas about race and racist discourses have a social reality; they thus have an ontological status, so I do not put the term in inverted commas when discussing them in this thesis. While rejecting race; it is necessary to retain racial and ethnic categories in order to elucidate the racialised patterns of stop and search use.

The lexicon of terms for describing ethnic groups or statistical collectivities is contested. Throughout this thesis I use the terminology I believe is the most appropriate, sometimes having to fall back on official categorisations when using government or police statistics.

INSTITUTIONAL RACISM

.....



The Macpherson Report brought back to popular usage the concept of institutional racism. The concept was devised in the mid 1960s by American academics and activists in the Black Power Movement and was then used on both sides of the Atlantic. Yet the widespread use of the term has not been accompanied by a clarification of its meaning; instead institutional racism has become a ‘catch-all phrase’ (Solomos 1983: 3) to describe a multiplicity of situations, processes and outcomes where racial discrimination or disadvantage is present. The context in which the concept was forged and subsequently used explains many of the ambiguities and problems inherent in it. This chapter does not offer a definitive definition of the term or resolve the debates surrounding the concept; rather it seeks to briefly chart the origins and contexts in which the term has been used. There are many different interpretations and uses of institutional racism – they operate at different levels, are subject to varying degrees of overlap, and have different levels of sophistication and consistency. Finally, the chapter uses the definition developed in the Macpherson Report, to highlight the problems with the concept.

In order to chart the development of the term and draw attention to the inherent weaknesses of the concept, it is essential to make a number of distinctions, which themselves are often not clear both in interpretations of institutional racism and critiques of the concept. The

concept has had significant political power at certain points in history. It is thus necessary to draw a distinction between the political and ideological functions of the concept, which brought about a decisive shift in the understanding of racism and the collective response to it, and as an analytical concept that attempts to explain real differences in social relations. It is necessary first to offer a definition of racism. Although the term racism is commonly used and has many everyday meanings, there remains disagreement over its definition (see Miles 1989; Anthias and Yuval-Davis 1993; Banton 1996; Carter 2000; Miles and Brown 2003). Following Miles (1989) and Miles and Brown (2003: 8), I define racism as an ideology, a 'discourse which, as a whole (but not necessarily in terms of all its component parts) represents human beings, and the social relations between human beings, in a distorted manner.' Racism can thus be identified by its component parts rather than its function. The distinguishing components of racism as ideology are firstly that it signifies biological and/or somatic characteristics as the criterion by which populations can be identified. A notion of race is employed, in which human beings are conceived as belonging to immutable, unchanging, inherently different populations. Secondly, one or more of the groups identified are attributed with additional characteristics which are evaluated negatively. Thirdly, these group characteristics are often seen to carry damaging consequences if they are allowed to proliferate or amalgamate with those outside the group. Thus racism provides a body of thinking that allows those who articulate and use it to 'make sense' of the social world. It is practically adequate, in the sense that social actors take up cultural resources in so far as they provide a working explanation of their social world and its rules and regularities (Carter 2000). Yet it is analytically distinct from exclusionary practices, which as Miles (1989: 78) observes 'refers only to a concrete act or process and does not presuppose the nature of determination.'

The relationship between intention and discriminatory actions is complicated; people may set out to discriminate or they may act in a discriminatory manner without the intention to do so (sometimes described as ‘unthinking’ or ‘unwitting’ racism). Equally, people may also hold prejudices and not act in a discriminatory manner on the basis of those prejudices. An associated concept is the idea of direct and indirect discrimination. Both refer to an exclusionary practice but to different means of ensuring that exclusion. Direct discrimination (whether or not sanctioned by the state) is a clear mechanism for discrimination that links an outcome with a perceived racial group, such as the ‘blacks need not apply’ signs ubiquitous in 1960s Britain or housing covenants that ensured houses would not be sold to African-Americans. Indirect discrimination includes circuitous means that may not be discriminatory in their nature, but nevertheless may disproportionately affect certain racial or ethnic groups. It is possible to have the intention to discriminate but to choose to do so in an indirect manner.

Historical origins and evolving meanings

1960s America

The concept of ‘institutional racism’ was devised by Carmichael and Hamilton in *Black Power - The Politics of Liberation in America* (1967) and rapidly gained acceptance in the USA as a useful political and explanatory concept. Carmichael and Hamilton developed an analysis of racial inequality in America as a prelude to a discussion of political strategies which blacks could use to challenge racial oppression. They argued (1967: 4) that:

Racism is both overt and covert. It takes two, closely related forms: individual whites acting against individual blacks, and acts by the total white community against the black community. We call these individual racism and institutional racism. The first consists of overt acts by individuals, which may cause death, injury or the violent destruction of property. This type can be recorded by television cameras; it can frequently be observed in the process of commission. The second type is less overt, far more subtle, less identifiable in terms of *specific*

individuals committing the acts. But it is no less destructive of human life. The second type originates in the operation of established and respected forces in the society, and thus receives far less public condemnation than the first type.

They contrast ‘individual racism,’ illustrated, for example, by the bombing of a church in Birmingham, Alabama, killing five black children, with ‘institutional racism,’ illustrated by practices that in the same city, saw five hundred black babies die each year due to the lack of proper food, shelter and medical facilities. Carmichael and Hamilton posit that black Americans are systematically excluded from or consigned to subordinate positions in the activity or function of the major institutions in society, such as the economy, education, health and the administration of justice. Institutional racism, they argue, ‘relies on the active and pervasive operation of anti-black attitudes and practices’ (1967: 5). They explicitly link institutional racism to the idea of ‘internal colonialism’: ‘Black people in the United States have a colonial relationship to the larger society, a relationship characterized by institutional racism’ (1967: 6). It is the consequences of institutional racism that interest Carmichael and Hamilton, rather than an analysis of its causes and operation.

The concept of institutional racism emerged at a specific time and context in American history. It was forged in the process of black political struggles of the time and attempts by activists to radically change American society. Carmichael and Hamilton were writing after the successes of the Civil Rights Movement and at the beginnings of the Black Power Movement. In the fourteen years between 1954 and 1968, six major legislative and judicial acts were passed, including the Brown v. Board of Education ruling of 1954, the Civil Rights Act of 1964 and Voting Rights Act of 1965, which effectively ended the legal basis of discrimination (Pinkney 1984). The Civil Rights Movement triumphed over *de jure*

segregation¹, yet *de facto* discrimination remained. Many of the problems faced by black people in the urban ghettos were not created or sustained by *de jure* segregation. As Kushnick (1998: 75–76) notes:

[t]he structures of the political economy have created the ghetto, have determined resource allocations which determine housing, education, health, employment and policing. None of these issues were addressed, or could be addressed by the civil rights legislation. It was not surprising, therefore, that Northern blacks whose pride had been raised by the CRM's [Civil Rights Movement] bravery and dignity and whose interests were not addressed were increasingly angry.

The persistence of socio-economic inequalities and the seeming ineffectiveness of legal measures to generate real change contributed to a reinterpretation of the causes of the problem, evident in the language and political tactics of the Black Power Movement (Williams 1985; Singh 2000). It became evident to black radicals that the institutions themselves were not capable of changing their own racist practices. This frustration fuelled the uprising in Harlem, New York in the summer of 1964 that began a chain of more than 200 uprisings that raged throughout urban America for the next five years. In response to these uprisings, President Johnson formed the National Advisory Commission on Civil Disorders, under Otto Kerner, to study the situation. When the Kerner Commission delivered its report in 1968, its findings shocked many:

What white America never fully understood – but what the Negro can never forget – is that white society is deeply implicated in the ghetto. White institutions created it, white institutions maintained it, and white society condones it. Race prejudice has shaped our history decisively in the past; it now threatens to do so again. White racism is essentially responsible for the explosive mixture which has been accumulating in our cities since the end of World War II (Kerner 1968: 2).

Yet the Kerner Commission failed to clarify what it meant by 'white racism,' or link it to the many examples of racist institutional practices that the report lays out. The report

¹ *De jure* meaning 'by right,' refers to a system of segregation or discrimination that is supported by the law. In contrast, *de facto*, meaning 'in fact,' refers of segregation and discrimination that is occurring without legal sanction (but also possibly without laws making it illegal).

instead offered a superficial analysis of the immediate conditions that gave rise to the uprisings, rather than the causes behind those conditions. The report failed to hold to account the institutional structures and practices responsible for those conditions and instead fell back on the familiar refrain of ‘black pathology’ (Knowles and Prewitt 1969). The U.S. Commission on Civil Rights (1970) echoed the findings of the Kerner Commission and went on to define racism as ‘any attitude, action or institutional structure which subordinates a person or group because of his or her color’ adding, ‘institutional structures was any well-established, habitual or widely accepted pattern of action’ (i.e. behaviour) or ‘organisational arrangement whether formal or informal’ (i.e. administrative) (quoted in Sivanandan 1985: 16 - 17). The Commission made a distinction between ‘overt racism’ and ‘indirect institutional subordination.’ Combating racism, the Commission stated, involved ‘changing the behaviour of the whites’ and ‘increasing the capabilities of non-white groups’ (Ibid.).

The rapidly changing context of the 1960s highlighted the inadequacies of existing social theory to predict and illuminate the new developments (Blauner 1972). Traditionally, discriminatory outcomes had been viewed as the direct result of prejudice. The emphasis was placed on prejudiced individuals as the cause and continuation of racially discriminatory actions and patterns. Prejudice was often presented as an archaic survivalism that would disappear as society became more industrialised, rational and progressive (Feagin and Feagin 1978). Myrdal (1964: 1, 24) defined race prejudice as ‘the whole complex of valuations and beliefs which are behind discriminatory behaviour on behalf of the majority group,’ in direct contradiction to the ‘equalitarian ideas of the American Creed.’ Thus both the individual acts of discrimination and aggression and the

pattern of Jim Crow² segregation reflected the prejudice of people in the South. As prejudice and the resulting discrimination appeared to conflict with the American Creed, its existence creates a moral dilemma for America. The ‘prejudice causing discrimination’ theory embodied the underlying assumption that all whites are inherently prejudiced, which failed to explain the many white Americans who condemned the overt racial prejudice displayed in the South, or the discriminatory institutions and structures which remained in the North.

Another influential theory at the time was the ‘race relations cycle,’ advanced by Park (1964). Park’s concept of race relations seeks to explain situations of group conflict and competition which social actors interpret in race terms. A race relations situation occurs when:

racial differences enter into the consciousness of the individuals and groups so distinguished, and by so doing determine in each case the individual’s conception of himself as well as his status in the community... Race relations, in this sense, are not so much the relations between individuals of different races as between individual consciousness of these differences (1964: 81).

Park argued that when different groups come into contact they enter a relationship which he characterises as a cycle – contact, competition, accommodation and assimilation. This structural sequence is independent of actors’ consciousness. Discrimination based on race is viewed as different only in degree to the experience of white European immigrant groups in the United States. Hence, as racial groups become assimilated into dominant society discrimination will dissipate. Theories that presented discrimination as the result of individual prejudice or as part of a ‘race relations cycle’ depict racism as transitory, but since they lack a structural component were unable to explain the continuing inequalities and persistent racial prejudice. ‘One alternative explanation offered was the study of those

² ‘Jim Crow segregation’ refers to a legal system of segregation that developed in the southern states of America after Reconstruction. (Jim Crow was a popular cartoon character of the day.)

institutional processes which created and perpetuated the ghetto, a vivid example of black oppression. Institutional racism, internal colonialism and dual labour markets were concepts used to provide this alternative explanation' (Williams 1985: 328).

Hence, Carmichael and Hamilton attempted to move the debate about racism away from discussion of bigoted white Americans acting on racial prejudices to an understanding of racism embedded in the structures of society. The concept was further developed by other academics and activists. Initial discussions focused on providing a definition of the concept. Jones (1972: 131) writes that: 'institutional racism can be defined as those established laws, customs and practices which systematically reflect and produce racial inequalities in American society. If racist consequences accrue to institutional laws, customs or practices the institution is racist whether or not the individuals maintaining those practices have racist intentions.'

Knowles and Prewitt (1969) attempt to provide an analysis of specific practices that can be defined as institutional racism. They note that it is first necessary to understand what institutions are and the role they play in society. The term, 'institution' is often used to describe organisations such as businesses, hospitals, schools and so on. They are formal, legally constituted organisations with written and unwritten rules and practices governing the conduct of those within the organisation. The term is also used to describe wider social arrangements or combinations of organisations through which collective actions are taken, such as 'the economy,' 'the family' or 'the criminal justice system.' Knowles and Prewitt posit that institutions have great power, to reward or penalise, to provide opportunities or remove them, and to decide how social goods and services are distributed. 'No society will distribute social benefits in a perfectly equitable way. But no society need use race as a criterion to determine who will be rewarded and who punished. Any nation that permits

race to affect the distribution of benefits from social policies is racist' (1969: 6). Knowles and Prewitt argue that both individual acts of racism and institutional racism may 'occur without the presence of conscious bigotry, and both may be masked intentionally or innocently' (1969: 5). For Knowles and Prewitt, institutional racism may be unintentional, it may be the result of good people carrying on with 'business as usual' or 'well-intentioned but naïve reformers' (1969: 6). Thus it is seldom clear who is responsible for discriminatory outcomes. In making the case for institutional racism, Knowles and Prewitt place emphasis on racial differentials in the effects of operating practices of various institutions - the economy, education of black and white children, the political system, health care and the administration of justice. In their discussion of the administration of justice, they point to the overwhelming whiteness of police departments and the judiciary. They believe a different standard of law applies to white and black Americans. In addition to the overt prejudice displayed in decision-making by police officers, lawyers and judges, institutional racism can result from the cultural and economic bias that ensures that black people are unable to afford bail or adequate defence lawyers or are unlikely to be represented on juries. 'The very structures of the system, because they were created by whites, invariably operate to disadvantage the culturally different, regardless of who is in control. The unequal dispensation of justice is a result both of the origin of legal institutions and their present operations by white citizens who do not recognise the worth of nonwhite cultures' (1969: 58 – 59). Although, Knowles and Prewitt identify the problem as lying in structures in society, their analysis falls back on individuals and the belief that white people in positions of power in those institutions will hold prejudices and act in a discriminatory manner.

Downs (1976) expands the idea that institutional racism can involve discriminatory actions that are not intentional. He (1976: 44) argues that:

Racism can occur even if the people causing it have no intention of subordinating others because of color, or are totally unaware of doing so. Racism can be a matter of *result* rather than *intention* because many institutional structures in America that most whites do not recognise as subordinating others because of color actually injure minority group members far more than deliberate racism.

For Downs, institutional racism or the alternative, 'institutional subordination,' which he suggests, is indirect in its nature, which makes it difficult to identify. Whereas overt racism is often observable, institutional subordination may occur due to actions that seem reasonable and 'unbiased.' Downs provides the example of an employer needing workers to fill jobs that demand advanced carpentry skills. If the employer hires through the local carpenter's union, which excludes all minorities, or if carpentry apprenticeships are only found in high schools in all white neighbourhoods, minorities will not have access to the jobs. Or if the jobs are only advertised by word of mouth, residential and social segregation in America makes it unlikely that the current white employees will have black friends or acquaintances to tell about the positions. The employer may have no intention to exclude minority applicants but the institutional context in which his actions took place would mean that they 'have racist effects, that is, they subordinate people because of their color' (1976: 47). There is confusion in Downs' analysis between intentionality and the mechanisms that institutional racism or subordination takes. It is possible that actors may not intend to discriminate but may do so by either direct or indirect means.

Blauner introduces a theory of 'internal colonialism,' to explain how racism became embedded in American institutions (Blauner 1972). This places less emphasis on prejudiced individuals, instead focusing on the ways privilege was created through the conquest of American Indians and the seizure of their land, the enslavement of African peoples and the westward expansion and seizure of Mexico. It is the creation and defence of group privilege that underlie the domination of people of colour in America. Blauner is careful to define institutional racism as not only individual prejudices but also the

interaction of various processes that sustain a pattern of white domination. He (1972: 9–10) states:

[t]he processes that maintain domination – control of whites over non-whites – are built into the major social institutions. These institutions either exclude or restrict the participation of racial groups by procedures that have become conventional, part of the bureaucratic systems of rules and regulations. Thus there is little need for prejudice as a motivating force. Because this is true, the distinction between racism as an objective phenomenon, located in the actual existence of domination and hierarchy, and racism's subjective concomitants of prejudice and other motivations and feelings is a basic one.

Thus it can be said that institutional racism arises as a consequence of the interaction between various social institutions, which maintain a pattern of oppression. Blauner gives the example of inner city ghettos (1972: 85-6). These areas are characterised by poor housing, high rents, high crime rates, low educational provisions and restricted employment opportunities. These factors are in turn created and reinforced by institutional neglect and individual actions. These problems may be exacerbated by, but are not dependent on racial prejudices, but the result is ghettos that are disproportionately inhabited by black Americans.

The emphasis on the *benefits* which accrue to white people as a result of ideologies and institutional processes was expanded by Wellman (1977). Wellman (1977: 221–222) defines racism as 'the defence of a system from which advantage is derived on the basis of race.' He also defines racism on the basis of its effects, rather than ideological content:

A position is racist when it defends, protects, or enhances social organisation based on racial disadvantage. Racism is determined by the consequences of a sentiment, not its surface qualities... White racism is what white people do to protect the special benefits they gain by virtue of their skin colour (1977: 76).

These early American writers expanded the existing understanding of racism to include not only beliefs but also all actions and processes, including those both individual and institutional, which have the consequence of creating and sustaining the subordination of 'black people.' The emphasis is placed on the outcomes or consequences of these beliefs, actions and processes in creating and sustaining racial disadvantage (Miles and Brown 2003). The resulting concept of institutional racism emphasises a number of salient features. Institutional racism a) results from the normal every day processes and operation of institutions; b) it is the outcome of the interrelationships between institutions, which results in cumulative inequalities; c) the intentions of people involved in the institution are irrelevant; d) it has developed from historical processes of racial exclusion and oppression; e) it includes a notion of white privilege; and f) it is identified through the analysis of outcomes and consequences.

Institutional racism provided a politically and ideologically powerful concept in 1960s America. It sought to break with existing understandings of racism that emphasised individual prejudices while lacking an analysis of systemic inequalities. It embraced a reinterpretation of the mechanism perpetuating segregation and inequality. Carmichael and Hamilton were political activists, campaigning for radical change in American society and organising black political developments. They (1967: 44) argued, 'before a group can enter open society it must first close its ranks.' Blauner was interested in ways that blacks could take control over their own neighbourhoods, which included campaigning for control over inner-city schools. Williams (1985: 237) notes '[p]olitical tactics, an understanding of existing society and radical programmes intermingled. That institutional racism was a concept forged in the process of the black political struggles explains why there are particular emphases, theoretical uses, and why certain contradictions and ambiguities are present from its initial use.'

It is these contradictions and confusions that make the concept less analytically useful. Racism is used, not only to refer to ideologies but also, according to Carmichael and Hamilton, policies, practices and outcomes that subordinate blacks and the pervasive operation of anti-black attitudes. Thus racism is used in this literature to cover ideologies which explain the historical development of racial inequality, the actions of individuals, and the intended or unintended processes within the institutional setting which result in inequalities (Williams 1985). Blauner realises this theoretical muddle and notes 'if racism is to be a useful concept for understanding oppression and social change in America, it cannot be used as a magical catch phrase to be applied mechanically to every situation without analysing specifics' (1972: 259).

In the early articulations of institutional racism, there is considerable confusion around intentionality and mechanisms for discrimination. For Downs (1976: 45), 'the very essence of institutional subordination is its indirect nature, which often makes it hard to recognise.' Yet, the indirect means for discriminating are then identified by measurements of the intentions of actors within institutions. Finally, emphasis is placed on the benefits which accrue to white people as a result of ideologies and practices and the ways in which privilege is maintained. Carmichael and Hamilton (1967) suggest that institutional racism is difficult to change because those with power benefit from the existing arrangements. Baron (1969) argues that it is not only those in power that benefit, but a multitude of white groups that gain economically and psychologically. Knowles and Prewitt (1967) use the overwhelming whiteness of institutions as direct evidence of institutional racism. This is not only to ignore other social divisions such as class and gender but also to fall into a biological determinist trap which links skin colour with an automatic racist belief. If all whites do indeed benefit from racism, where is the political constituency for changing the system? And, how do you account for those white people that have fought to do so?

Institutional racism in 1970s and '80s Britain

The concept of institutional racism was first used in Britain in the 1970s and '80s. The acceptance and use of the concept has been influenced by similar processes as those identified in America (Williams 1985). Kushnick (1982) argues that there are close parallels between America in the 1960s and Britain in the 1980s. Although theories of racial inferiority were rarely publicly articulated by the 1960's, migrants and their descendants from the British colonies were concentrated in the worst housing and employed in largely low paid manual jobs (Miles and Brown 2003). Early commentators portrayed racism as a temporary phenomenon, interpreted as xenophobia that would disappear as familiarity increased (Patterson 1965). The 1965 and 1968 Race Relations Acts outlawed direct discrimination in a limited number of areas such as housing, employment and the provision of goods and services, but relied on compliance through goodwill rather than prosecution (Bourne 2001). Yet widespread structural inequalities remained (Brown 1984), so attention turned away from expressions of racism and intentional discrimination towards attempts to locate the causes of 'black disadvantage' in the structures of British society. Yet the concept of institutional racism was introduced and employed with little analytical rigour (Mason 1982; Williams 1985; Phillips 1987; Miles and Brown 2003). There appear to be two broad, overlapping directions taken in the early literature – a structural interpretation which identifies how racism became institutionalised as a consequence of state policy and one which focuses on unintended consequences of policies and processes.

Institutional racism occupied a central position in the influential work of Sivanandan in the 1970s and '80s (Bridges 1999; Miles and Brown 2003). In the article, 'Race, Class and the State' (1976), Sivanandan locates the origins of contemporary racism in the need of the state to secure large pools of labour to ensure capital's profitability. In the years after the

Second World War a chronic labour shortage resulted in mass recruitment of labour from the colonies and ex-colonies. The pattern of economic growth and the colonial legacy meant that black workers were forced into low-skilled, low paid employment and became 'ghettoised' in the worst inner-city housing. 'To put it crudely, the economic profit from immigration had gone to capital, the social cost had gone to labour, but the resulting conflict between the two had been mediated by a common 'ideology' of racism' (Sivanandan 1976: 350). It was this ideology of racism that sparked the 'race riots' of the late 1950s. This provided a vivid warning to the state that although useful (for the purpose of exploitation) racism had to be managed. The state responded with a dual strategy. Capital had absorbed all the unskilled labour that it needed, thus a series of immigration laws in the 1960s and '70s exploited and exacerbated popular racism and race ideas while at the same time laws such as the Race Relations Acts sought to reduce the racism faced by migrant communities. Thus Sivanandan (1976: 358) argues:

The basic intention of the government, one might say, was to anchor in legislation an institutionalized system of discrimination against foreign labour, but because that labour happened to be black, it ended up institutionalizing racism instead. Instead of institutionalizing discrimination against labour it institutionalized discrimination against a whole people, irrespective of class. In trying to banish racism to the gates, it had confined it within the city wall.

Institutional racism, then, for Sivanandan, described racism which inhered in the apparatus of the state and the structures of society. It was first set into the laws, and from there became woven into the executive, the judiciary, the economy and all the other institutions that formed the British state. 'For it was state racism which provided the context for racist policing, for discriminatory practices in employment and education, for media calumny and the creation of popular racism which, in turn, reinforced prejudiced attitudes' (Bourne 2001: 10).

The other interpretation of institutional racism focuses on discriminatory outcomes that result from the normal workings of institutions with the possible absence of a racist ideology. It thus becomes a descriptive concept essentially related to inequitable outcomes (Ginsburg 1988). For example, Dummett (1973: 131) suggests that a racist society:

has institutions which effectively maintain inequality between members of different groups, in such a way that the open expression of racist doctrine is unnecessary or, where it occurs, superfluous. Racist institutions, even if operated partly by individuals who are not themselves racist in their beliefs, still have the effect of making and perpetuating inequalities.

Thus for Dummett (1973: 131), 'a racist institution has no need to put up a notice saying 'No blacks' if its normal method of working exclude or admit them only on unequal terms.'

By the 1980s, the concept began to be used to identify how particular institutions such as housing agencies, schools, the health service and social services generated and reproduced racialised divisions within their area of concern (Singh 2000). Rex and Moore (1967) provide an example in their study of Sparkbrook, Birmingham in the 1960s. The residence qualification for council housing applied by Birmingham Council had the consequence of systematically discriminating against blacks. There were no rules against providing housing to black people, but there were rules against considering applications from those who had recently arrived in the local authority area and against overcrowding. These rules had the effect of preventing black families accessing council housing (Rex and Moore 1967: 24 - 5). This is a classic example of the mechanism of indirect discrimination. Thus institutional racism was defined as arising as a consequence of the implementation of policies which were intended to be universal in their application or where racial considerations had not been taken into account but where the outcome was clearly discriminatory.

This articulation of institutional racism made sense of the problem for grassroots campaigners and black political parties of the time (Bourne 2001). The Commission for Racial Equality (1985: 2-3) defined the problem in this way:

For too long racism has been thought of in individual psychological terms, reducible to the actions of prejudiced individuals. The concept of institutional racism draws attention to the structural workings of institutions, which exclude people regardless of individual attitudes.

The early 1970s saw increasing political pressure from black and anti-racist organisations and street skirmishes between minority youths and the police (Sivanandan 1974). This heralded the 1976 Race Relations Act, which outlawed indirect discrimination – discrimination that could occur with or without its authors having racist motivation or intent – in employment, education, provision of goods and services and housing. The law moved away from conciliation to enforcement and changed the amorphous duty of ‘promoting harmonious community relations’ into a duty ‘to promote equality of opportunity as well as good race relations’ (Bourne 2001). But the Act did not appease discontent and by 1981, the first inner-city youth uprising had taken place in Brixton, south London and Lord Scarman was appointed to investigate its causes.

Lord Scarman’s Report (1981) into the Brixton uprisings was critical in two ways – its analysis of racism and its legacy of policing reform on the basis of this analysis (Bourne 2001). Scarman rejected the existence of institutional racism in the police force specifically and society in general.

‘Institutional racism’ does not exist in Britain: but racial disadvantage and its nasty associate racial discrimination have not yet been eliminated. They poison minds and attitudes; they are, and so long as they remain, will continue to be, a potent factor of unrest (Scarman 1981: 135).

In his rejection, he offers a particular understanding of the concept:

[i]t was alleged to me... that Britain is an institutionally racist society. If by that is meant that it is a society which knowingly as a matter of policy, discriminates against black people, I reject the allegation. If, however, the suggestion being made is that practices may be adopted by public bodies as well as private individuals which are unwittingly discriminatory against black people, then this is an allegation which deserves serious consideration and, where proved, swift remedy (1981: 11).

Thus Scarman rejects the notion that *all* police officers *deliberately* discriminate against black people and the idea that the organisations and institutions of society are racist, but accepts in principle that the *practices* of public bodies and individuals may *unwittingly* (that is, unintentionally) discriminate.

Thus in 1980s Britain, institutional racism began to be used extensively in two main ways. Firstly, to describe how racism became institutionalised as a consequence of state policy and secondly, to identify racial inequalities as the outcome of normal bureaucratic and administrative workings of institutions, with or without racist intent. Institutional racism was perceived to be evident if the policies or practices of an institution result in racist inequalities.

The Macpherson Report

In the late 1990s, the concept of institutional racism once again moved to centre stage as a result of the Macpherson Report. During the inquiry, Macpherson did not attempt to resolve the debate on the character of institutional racism; he instead sought to develop a definition within the boundaries of the inquiry. Macpherson (1999: para 6.6) argued:

[w]e must do our best to express what we mean by those words [institutional racism], although we stress that we will not produce a definition cast in stone, or a final answer to the question. What we hope to do is to set out our standpoint, so that at least our application of the term to the present case can be understood by those criticised.

After considering various accounts and submissions, Macpherson (1999: para. 6.34) defines institutional racism as the:

The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.

This definition appeared to ‘make sense’ of the experiences of the Lawrence family and Dwyane Brookes, Lawrence’s companion on the night he was murdered, as well as the failures of the murder investigation and some of the wider problems of racism in policing (Singh 2000; Whyte 2002). Macpherson identified several areas where institutional racism was seen to manifest itself: the insensitive reaction to the Lawrence family and Brookes; the failure of officers to realise that the murder was racially motivated, the continuing disparities in stop and search figures, the failure of racial awareness training, and the lack of trust and confidence in the police leading to the under-reporting of racist incidents (1999: para. 6.45).

The willingness of Macpherson to accept the existence of institutional racism was greeted as triumph in the face of Scarman’s rejection of it twenty years before (Bourne 2001). Although the finding created much controversy, in many respects it offered little that was qualitatively new in its underlying analysis of the problem (Rowe 2004). Solomos (1999) notes that the definition contained in the report was reliant on notions of ‘indirect racism’ and ‘racial disadvantage’ that became part of public policy under the 1976 Race Relations Act. Scarman’s (1981: 182) argument that ‘racialism and discrimination against black people – often hidden, sometimes unconscious – remain a major source of social tension and conflict,’ was echoed in Macpherson’s reference to ‘unwitting prejudice.’ As with earlier definitions, it is the outcome of insensitive treatment, low reporting of racist incidents and continuing disparities in stop and search figures that were used to ‘prove’ the existence of institutional racism.

The problem with institutional racism

The concept of institutional racism developed out of a specific context in 1960s America. It sought to explain the persistence of racial inequalities in the face of successful legal reforms coming out of the Civil Rights Movement and challenge existing orthodoxies that located the problem in the psychology of prejudiced individuals or so called pathological black culture. The fact that it was forged in such circumstances explains its particular emphases and theoretical uses and also certain contradictions and ambiguities (Williams 1985). As demonstrated above, the concept has since been re-elaborated at different points in recent British history to explain a range of processes, ideas and events. The initial ambiguities remain unresolved as the term has become further stretched in very different contexts. The Macpherson Report has had a remarkable influence on political and cultural discussions of institutional racism, but such discussions have often been at a practical rather than theoretical level (O'Grady, Balmer et al. 2005). In providing a detailed critique of the Macpherson Report's use of institutional racism, this chapter hopes to raise the key problems with the concept. As with the concept itself, the problems are also interrelated and overlapping.

Different levels of analysis

The concept of institutional racism has been extended over different levels of analysis (Williams 1985; Singh 2000) or social domains (Layder 1993). In its articulation in 1960s America and 1970s and '80s Britain, it was pitched at the level of social formation and was used to identify the different interrelationships between institutions that generate and reproduce black disadvantage. More recent uses have concentrated upon one institution and its internal dynamics, such as the police service, housing agencies, the health service or the education system, that generate racial disadvantage in that particular setting. Some definitions also identify individual involvement, often in the form of staff attitudes or

actions, in the institutionalisation of racism in policies and practices. Thus the concept of institutional racism covers three different levels of social analysis: social formation, single institutions and individuals. In many uses of the term it is often unclear at which level the concept is locating the problem or how the different levels relate to each other in the creation and reproduction of racial inequalities. When referring to a single institution or implicating the role of individuals the concept often carries the connotation of the much wider analysis of the cumulative effects of the interaction between institutions.

Macpherson locates institutional racism at the level of the single institution. The focus is on the police service but he (1999: para. 6.54) notes, 'it is clear that other agencies including for example those dealing with housing and education also suffer from the disease.' Whyte (2002: 7) observes 'Macpherson's version of institutional racism is one that is entirely devoid of any historical or political context... Although it is not stated explicitly, the inference is that institutional racism is almost innate, an independently occurring 'bad' that has to be eradicated with little attention to how it came to be there in the first place.' Macpherson fails to consider the level of social formation, the historical process and relationships between different institutions in society that have shaped relations between the police and black communities. The Metropolitan Police are simply one institution embedded within a wider system; any analysis would need to include wider social structures such as the government, the judiciary, the education system, the employment system, and the welfare system and their interaction and contribution to racial inequalities. We cannot adequately understand what is occurring at one level without exploring the others and how each is interlinked.

Although Macpherson attempts to go beyond Scarman, in the claim that institutional racism permeates society both at the institutional as well as individual level, he does not tell us

how to identify racism at the institutional level. The report refuses to locate institutional racism in the structural context, part of which would include the policies and procedure of the Metropolitan police (Wight 2003). Indeed, the Report is keen to point out that it is *not* the policies of the Metropolitan Police that are racist, instead ‘it is in the *implementation* of policies and in the *words* and *actions* of officers acting together that racism may become apparent’ (Macpherson 1999: para. 6.24, emphasis added). Once again, racism becomes located at the level of the individual. ‘What has to be shown is precisely how such attitudes and actions derive from the workings of the institution itself. Macpherson is not always able to demonstrate that the racism he identifies is institutional as opposed to individual’ (Lea 2000: 221). This approach brings us back to describing people within an institution as racist; the use of institutional racism as a concept was an attempt to move beyond the individual level of analysis, ‘to then reduce ‘institutional racism’ to the presence of racists within an institution would appear to render such an attempt pointless’ (O’Grady, Balmer et al. 2005: 662). Macpherson’s definition ‘tilts the definition of institutional racism dangerously back towards prejudice – so that personal racism becomes elevated to institutional racism’ (Sivanandan 2000: 2).

Conflation of beliefs, actions and processes

Macpherson tells us institutional racism can be detected in processes, attitudes and behaviour (presumably of those working within the institution) but he is unable to identify a site, or locus for racism. Related to the confusion over which level of analysis Macpherson’s concept is operating on, is the conflation of beliefs, actions and processes (Miles and Brown 2003). Racist attitudes can be held and expressed by individuals but processes or procedures are external to individuals. Processes and procedures are constructed and perpetuated by individuals within the organisation but can take on autonomy of their own, meaning they continue after the individuals who devised them have

left. Macpherson's definition does not tell us who or what has made these processes racist or where racism is located within an institution. 'The Macpherson definition (and others that preceded it) make such questions unnecessary. Certainly, the Macpherson Report was at pains to point out that "institutional racism" did not imply that every police officer in the Metropolitan force was racist. So how does one account for racism within an institution? If racism is a belief, who holds it on behalf of the institution? Or, to put it another way, how can an institution be racist, as it is not capable of action (or thought/belief) in the way that people are' (O'Grady, Balmer et al. 2005: 622). The problem is illustrated in the discussion of the Lawrence murder investigation. Although Macpherson (1999: para.4.11) feels able to conclude that 'there was a collective failure of a group of officers to provide an adequate and professional service,' they remain a group of officers and not all officers within the Metropolitan Police Service. Macpherson identifies the failure to characterise the Lawrence murder as a racist crime as an indicator of institutional racism. Yet half of the officers involved, including the senior investigating officers did characterise the murder in such terms (1999: paras. 19.35, 19.38). So why are beliefs held by half the officers involved in the case that failed to recognise the racist nature of the murder taken as the beliefs of the whole institution?

'Unwitting prejudice'

Institutional racism complicates the relationship between intention and outcome. If inequalities exist then institutional racism is taken to exist irrespective of the intentions or motivations of social actors. Beliefs may or may not manifest themselves in logical actions, just as actions may or may not be consistent with beliefs (Singh 2000). The concept of institutional racism ignores this debate (Williams 1985; Miles and Brown 2003). The accounts of institutional racism fail to explain why some actions are the result of overt racism and why others result from unwitting racism (Wight 2003). Without this

understanding, and the ability to establish intent, it makes it almost impossible to establish direct culpability. It may be possible to hold someone culpable, regardless of their beliefs, if they are in a position of authority and fail to address racism within the organisation; although responsibility remains hard to prove.

Macpherson adopted the theoretical position advanced by Scarman, that organisations and individuals could ‘unwittingly’ discriminate. He (1999: para. 6.17) argued:

Unwitting racism can arise because of lack of understanding, ignorance or mistaken beliefs. It can arise from well intentioned but patronising words or actions. It can arise from unfamiliarity with the behaviour or cultural traditions of people or families from minority ethnic communities. It can arise from racist stereotyping of black people as potential criminals or troublemakers. Often this arises out of the uncritical understanding born out of an inflexible police ethos of the ‘traditional’ way of doing things. Furthermore, such attitudes can thrive in a tightly knit community, so that there can be a collective failure to detect and to outlaw this breed of racism. The police canteen can too easily be its breeding ground.

The Report goes on to criticise the ‘colour blind’ approach, as it is insensitive to the needs of people from minority communities. Institutional racism emerges in the report as the unwitting racism of institutions and ‘is the product of individual attitudes, exacerbated by a disinclination to critically self-examine’ (Anthias 1999: para. 2.5).

Macpherson’s approach fails adequately to consider racial abuse as directly and knowingly perpetuated by the police; the result of intentional, witting police practice. Indeed, the lived experience of black communities, and many of those giving evidence to Macpherson, was an experience of overt, intentional racial harassment and violence by the police.

Organisations such as the Institute of Race Relations, have long documented police harassment (Institute of Race Relations 1979; 1999). Many of these were clear acts of aggression aimed at subordinating, humiliating and intimidating black people. ‘The conceptual separation between overt (witting) racism and covert (unwitting) ‘institutional’ racism in the terms described by Macpherson dangerously reinforces a false dichotomy.

For he describes those phenomena in mutually exclusive terms. There is no possibility for both types of racism to exist in tandem, or for the presence of a relation between the two types of racism: for example, there is no scope for investigating the possibility that overt racism might flourish in an environment that is institutionally racist' (Wight 2003: 10). He also fails to explain why one form of racism may come into play in certain circumstances and not the other.

The conclusion that racism could be 'unwitting' and unintentional made the acceptance of Macpherson's definition of institutional racism palatable to the police and government. During the second part of the Inquiry, Sir Paul Condon, the then Metropolitan Police Commissioner, utilised the definition of institutional racism offered by Scarman. He accepted that there may be racism amongst the rank and file officers, a lack of rigour in investigating charges of racism against officers and abuse in the use of stop and search but denied the existence of institutional racism, when defined as consciously and deliberately a matter of policy and procedure (Singh 2000). The definition of racism as unwitting and unintentional allows racism to be portrayed as something almost beyond the control of officers within the organisation. The Deputy Chief Constable of the Yorkshire Police noted after the publication of the report: 'if institutional racism means unintentional prejudice, that such prejudice is subconscious, almost subliminal, then I totally accept the comment'(quoted in Singh 2000:33). Racism is presented as an innate force pulsing through institutions that unless controlled will have discriminatory effects on black people. It thus becomes impossible to hold individuals or groups of individuals to account for their actions; rather the imperative becomes to control the abstract forces of racism in institutions. As the then Home Secretary Jack Straw said in Parliament on the day of the publication of the report: '[t]he report does not place the responsibility on someone else. It places responsibility on each one of us. We have to make racial equality a reality' (quoted

in Wight 2003: 12). Thus Condon was able to accept the existence of institutional racism and yet refuse to discipline any of the officers involved in the Lawrence case for misconduct (Wight 2003).

A definition too vague to apportion responsibility

As we have seen, Macpherson's definition of institutional racism lacks both social and historical specificity and emphasises overt and 'unwitting' or unintentional racism.

Macpherson attempts to locate the problem at the structural level but instead falls back to the 'bad apple' orthodoxy, which locates the problem in the belief and actions of individual officers. Whyte (2002: 11) argues ' [t]he looseness and low levels of individual responsibility implied by Macpherson combine to produce a definition which is extremely problematic in identifying the cause of racist policies and practices and the culpability of individuals.' Although Macpherson locates the problem in 'processes,' he then contradictorily points out that it is not the policies of the Metropolitan police that are racist. Bridges (1999: 312) argues:

[i]n this respect, the Macpherson inquiry appears to have adopted a fairly superficial view of what constitutes police 'policy', identifying it with the 'positive description of policy initiatives by senior police officers' which were presented to it, rather than the strategic priorities and systematic practices which together make up actual or operational police policy as experienced 'on the ground' by the police and public alike. Thus, the inquiry failed to consider whether the higher priority and greater resources assigned, for example, to police surveillance and stop and search against 'black muggers' than to the investigation of racist violence, is merely a result of prejudice, ignorance, thoughtlessness or stereotyping on the part of police officers, either individually or collectively, or actually reflects strategic choices made at the highest level of the police and government over the direction of policing operations.

Thus the responsibility of individual officers is obscured by the notion of 'unintentional racism' and the responsibility of policy makers is obscured by the focus on 'implementation of policies, words and actions' by those individual officers.

Outcomes and empirical proof

Institutional racism is taken to be evident when the outcome can be shown to discriminate against black people. Mason (1982: 43) argues '[u]sed in its most general and unspecified way, the term refers to any institution in which groups, socially defined as races, are systematically disadvantaged in respect of social rewards, capacities or opportunities. Used in this way, however, the term is simply another way of describing the situation. It adds nothing to our understanding of the mechanisms of such disadvantage or the means of combating them.'

Thus, Macpherson tells us how to identify institutional racism but not what causes it. He deals solely with institutional racism as an outcome: it is a 'collective failure,' it can be 'seen or detected in processes, attitudes and behaviour,' it is apparent in the treatment of the Lawrence family, in the countrywide disparity in stop and search figures, in the underreporting of racist incidents and in the failure of police training (1999: paras. 6.34, 6.45). But why does institutional racism occur? What processes lead to these outcomes? Macpherson and the more general uses of institutional racism cannot answer this. The lack of minority recruits to the police service, disparities in stop and search figures, failure to identify and deal appropriately with racist incidents, were all identified by Macpherson as illustrative of normal institutional procedures and practices which explain differential black experiences of policing. How do these factors relate to each other or the cause of such inequalities? They are all examples of injustices but their exact relationship to racial inequality is not empirically demonstrated. Solomos (1999: paras. 2.4, 2.5) notes, 'despite these conceptual debates there remains a real dearth of well researched studies of the kinds of processes and institutions that are referred to in the Macpherson Report' and a 'relative paucity of empirical studies of how minorities experience their treatment within institutional settings.'

The focus on outcome encompasses a multitude of practices and processes that may not result directly from racism (Singh 2000). Inequalities may result from a number of different social processes. Black people are overwhelmingly represented in the working class; hence disadvantage may result from their class position. Similarly, black women face a 'triple jeopardy,' they face being oppressed due to their class, gender and race. Thus, institutional racism can be used to describe processes and practices that generate black disadvantage even if the disadvantage has actually resulted from class or gender discrimination. The inflated use of institutional racism thus has no power to differentiate between the effects of racism and other social processes or to describe the interaction between these different processes (Anthias 1999; Singh 2000). If the concept is used as a default means of explaining anything that leads to outcomes of exclusion and marginalisation, it becomes little more than an 'all-embracing term of abuse, a rhetorical accusation of guilt' (Keith 1993:199 - 200).

What white people think and do to black people

Institutional racism is couched in an erroneous theory of social stratification (Singh 2000; Miles and Brown 2003). Although there are variations, the descriptions put forward usually identify two homogeneous groups, 'whites' and 'blacks,' and place them in a hierarchical relationship to each other. In this hierarchy, blacks are the subordinate class and whites are presented as the dominant and exploitative class (Miles and Brown 2003). 'Stress is laid on benefits which 'white' people accrue as a result of this relationship and the ways in which this dominance is sustained by institutional racism'(Singh 2000: 35). This theory fails to explain why both black and white people occupy different positions in the class structure and why not all black people are economically disadvantaged. It also ignores how the experiences of many black women differ from that of black men and the

outcome of the interaction between class, gender, sexuality and racism (Williams 1985: Anthias 1999).

By implication, theories of institutional racism depict all white people as racist who benefit materially and psychologically from black oppression. For Mann (1995: 260),

‘Institutional racism is present when the social, political, economic, religious, and educational structures, or the major institutions in a society benefit a particular race – the ‘white’ race in the United States – at the expense of other races.’ This presents racism as an innate characteristic of whiteness. Sivanandan (1985) makes this point powerfully, in his discussion of racial awareness training:

Racism, according to RAT [racism awareness training], has its roots in white culture, and white culture, unaffected by material conditions or history, goes back to the beginning of time. That is why, in the final analysis, whites can never be anything more than ‘anti-racist racists.’ They are racist racists to begin with, born as they are to white privilege and power; but if they do nothing about it, ‘collude’ (consciously or unconsciously) in the institutional and cultural practices that perpetuate racism, then they are beyond redemption and remain racist racists. If on the other hand, they ‘take up arms’ – or, in this case RAT, against such privileges – ‘and opposing, end them,’ in their own lives, at least, they become ‘anti-racist racists.’ Racist, however they remain in perpetuity (1985: 29).

All whites are by definition racist. If this is the case, it unlikely to be in their interests to change a system, which operates in favour of those interests. This definition has significant political implications – it allows those in power to acknowledge the problem but do nothing about it and it hinders the development of an inter-ethnic constituency for change.

By implication, the struggle between white and black groups constitutes the primary dynamic within society. This assumes that black people are the sole victims of racism and ignores both the historical and contemporary instances where white people are the object of racist discourses. For example, the Irish have long been the object of racist discourses and

practices and it has been demonstrated that they receive disproportionate treatment by the police (Young 1994).

Conclusion

The concept of institutional racism has had significant political and symbolic power. In Britain and America, the concept has been used to attack existing theories that locate racial inequality in individual prejudices or cultural pathology. It has been influential in shaping anti-racist policies. The argument in this chapter has been that the use of the concept often generates confused analysis of the sources of racism and discrimination, which create an obstacle to the development of anti-discrimination strategies. In particular it has been argued, the term conflates beliefs, actions and processes, thus losing its explanatory power and ability to locate racism. The irrelevance of intent to concepts of institutional racism makes it difficult to establish direct culpability. Some writers put forward a theory of social stratification in which there are two classes, 'white' and 'black' in a hierarchical relationship to each other. This presents racism as the prerogative of white people and black people as the sole victims of racism. The existence of racial disadvantage is taken as empirical proof that institutional racism exists. Often studies of institutional racism outline and analyse the outcomes they identify as the consequence of institutional racism but they fail to identify the processes and mechanisms that have led to those outcomes.

With these weaknesses in mind, is 'institutional racism' a useful conceptual tool in explaining racial inequalities? As this chapter has shown the concept is often applied to discussion of policing and in particular the use of stop and search (Bridges 1999; Macpherson 1999; Lea 2000; Bourne 2001). Since 1995, ethnic data on stop and search has consistently shown ethnic disparities in stop and search use. It was these continued

disparities that were identified by Macpherson as evidence that institutional racism exists in the Metropolitan Police Service. Yet, he was unable to locate where racism exists and illustrate how it has created the inequalities in stop and search. This thesis seeks to take the disparities in stop and search use as its starting point and empirically investigate whether institutional racism is a useful concept for explaining why and how these disparities occur.

STOP AND SEARCH IN THE UK



Nothing has been more damaging to the relationship between the police and the black community than the ill judged use of stop and search powers. For young black men in particular, the humiliating experience of being repeatedly stopped and searched is a fact of life, in some parts of London at least. It is hardly surprising that those on the receiving end of this treatment should develop hostile attitudes towards the police. The right to walk the streets is a fundamental one, and one that is quite rightly jealously guarded.

Bernie Grant (NARCO 1997: 3)

People come into contact with the police in a variety of locations and contexts and for a variety of reasons. One of the most contentious interactions concerns the stopping and searching of people on the street. 'Stop and search' refers to the police practice of stopping and searching members of the public who they suspect may have committed or be about to commit an offence. The police consider stop and search to be an essential tool in the detection and prevention of crime. Yet, being stopped and searched is not only an embarrassing and intrusive experience but has wide ranging consequences for trust in and the legitimacy of the police and provides a gateway into the formal criminal justice system. Research studies (Smith and Gray 1983; Young 1994; Brown 1997) have consistently shown that the power to stop and search is used disproportionately against young black and Asian men. Attempts at legal regulation of the power has had mixed results and attracted much criticism. The effectiveness of stop and search, most commonly measured by arrest rates, is limited and has led to questioning of its utility in light of the impact on those on the receiving end of stop and search. Stop and search, like the 'Sus laws' before them, has symbolic significance in the fight for equality in policing. Disparities in those that are

stopped and searched, will impact on disproportionality at other stages of the criminal justice system such as remand, sentencing and imprisonment.

Stop and search prior to PACE

Prior to the introduction of the Police and Criminal Evidence Act 1984 (PACE), the legal powers to search suspects were incoherent and had developed on an ad hoc basis, contained in a variety of local and national legislation. Under s66 of the 1839 Metropolitan Police Act, the police in London had the power to stop and search people they ‘reasonably suspected’ of carrying anything ‘stolen or unlawfully obtained.’ Similar powers existed in the West Midlands, Manchester and Liverpool. Nationally, however the police had powers to stop and search only for drugs and firearms (Willis 1983). Most of these powers allowed police officers only to stop and search people if they had ‘reasonable suspicion’ that the person had committed an offence. These powers operated along side the 1824 Vagrancy Act (s.4 and s.6), which gave officers the power to search and arrest on the offence of being a suspicious person or reputed thief being in or on any highway etc. with the intent to commit a felony (Demuth 1978). Under these pieces of legislation the criterion to conduct a stop and search was an officers’ subjective suspicion; no external objective factors such as a witness description or a crime report were necessary (Rowe 2004). It is the primacy of officers’ suspicions that led to stop and search legislation being described as the ‘Sus laws.’ In the absence of any national legal framework, forces were not required to collect data on how they were using these powers, making quantitative analysis impossible. Research from the 1970s and 1980s questioned how far the requirement of reasonable suspicion inhibited police action and highlighted the disproportionate use of the powers against black people (Demuth 1978; Institute of Race Relations 1979; Brogden 1981; Willis 1983). In 1981, the Scarman Report, which sought to explain the causes of the

disturbances in Brixton, South London, criticised the approach to policing in Brixton, in particular operation 'Swamp 81,' which involved more than 120 officers patrolling the area with the instruction to stop and search anyone that looked 'suspicious' (Scarman 1981). Over 4 days, 943 were stopped, and 118 people were arrested, more than half of whom were black (Bowling and Phillips 2002: 139-40). Scarman (1981: 45) perceived the whole operation as a serious mistake, describing the disturbances as 'essentially an outburst of anger and resentment by young black people against the police' and re-emphasising the centrality of public 'consent' in securing legitimacy for policing. Scarman concluded that stop and search was an essential tool in confronting street crime but called for the introduction of safeguards to ensure that it was exercised with reasonable grounds for suspicion (Scarman 1981).

Two studies from the early 1980s indicate some of the problems surrounding the police use of stop and search and contributed to the drafting of PACE. Research by Willis, for the Home Office (1983), analysed stop and searches conducted in two metropolitan and two provincial police forces. Recognising the problems of defining what constituted a 'stop,' Willis found considerable under-recording of stops. Although the various stop and search legislation had a requirement of reasonable suspicion, she found that relatively few stop and searches were based on the suspicion of a particular offence, such as theft or drug possession. Instead the most common reason given for stopping and searching someone, according to police records, was for 'movement.' Movement does not constitute a legally valid basis for stopping and searching a person. During interviews with officers, Willis found that they gave differing interpretations of 'movement,' finding it hard to specify. If officers found it hard to explain why they made a particular stop, then it is difficult to conclude that they had reasonable grounds of suspicion. This is supported by the arrest rate

as a result of 'movement' stops. Whilst the percentages of stop and searches for drugs resulting in arrests ranged from 33% to 38%, the arrests resulting from 'movement' stops was only 1% to 6% (1983:19). Willis also found that 'blacks, and particularly young black males, were much more likely to be stopped and searched by the police than whites' despite subsequent prosecution rates being the same for blacks and whites (1983: 22).

These findings were reinforced by Smith and Gray (1983), in a Policy Studies Institute study of policing in London. They found that the concept of reasonable suspicion was an ineffective constraint on officers' discretion. The reasons given by officers for stopping and searching people were categorised in the following three ways: traffic offences (18%), reasonable suspicion and other offences (69%) and no good reason (33%) (1983: 233).

Even these percentages are likely to have inflated the number of stops on reasonable suspicion, as Smith and Gray adopted generous criteria for reasonable suspicion including 'running or moving quickly,' 'hanging about, moving very slowly, especially at night' and 'being out on foot in the small hours of the morning' (Sanders and Young 2000). Like Willis, Smith and Gray noted a distinct pattern of policing that emerged during their observations - officers tended to target young males, in particular young black males (Smith and Gray 1983: 233). Although, the majority of stops observed were 'amicable,' those stopped were critical of the police, particularly when the officers involved had failed to give an explanation for the stop. About one in every twelve stops led to an arrest or report for summons. Smith and Gray conclude that officers were exceeding their powers to stop and search and that this was having deleterious effects on the relations between the police and minority groups.

The Royal Commission on Criminal Procedure (sometimes referred to as the Phillips Commission) (1981) were aware of the difficulties in regulating stop and search and the tensions felt in many communities over its use as had been highlighted by Scarman. It recommended a uniform power that would give the police the power to stop and search for stolen goods or articles that it is an offence to possess, but that these powers were to be exercised within strict safeguards. At the core of the Commission's consideration was the need to balance the rights of the suspect with the requirement to tackle crime, in procedures that were publicly accountable (Royal Commission on Criminal Procedure 1981).

Police and Criminal Evidence Act 1984 (PACE)

On the heels of the recommendations of the Royal Commission and in an atmosphere of continued public concern about discrimination in the use of stop and search, the 1984 Police and Criminal Evidence Act was introduced. The legislation granted a new national power to stop and search 'any person or vehicle' and 'anything which is in or on a vehicle, for stolen goods or prohibited articles' and 'to detain a person or vehicle for the purpose of a search' (s1(2)). Search powers remain embodied in a range of legislation that is collectively regulated by PACE Code of Practice A. This legislation includes the PACE 1984 (s 1), Misuse of Drugs Act 1971 (s 23), the Firearms Act 1968 (s 47), the Terrorism Act 2000 (s 43) and section 60 of the Criminal Justice and Public Order Act 1994 (see Appendix 1 for summary of these powers). The Code of Practice (hereafter the Code) has been updated five times since the introduction of PACE, the most recent being December 2005. The power is intended to be investigative, used for the purposes of crime detection or prevention in relation to specific individuals at a specific time (Lustgarten 2002). The Code (2005: para 1.4) defines the primary purpose of the power as 'to enable officers to allay or confirm suspicions about individuals without exercising their power of arrest.' The

safeguards that the Philips Commission thought essential were incorporated into PACE, in the form of administrative controls. These included the requirement of a threshold of reasonable suspicion and the recording and monitoring of stop and search statistics.

‘Reasonable suspicion’ must be based on objective and individual grounds, rather than the targeting of certain groups over others. The Code explains:

Reasonable grounds for suspicion depend on the circumstances of each case. There must be an objective basis for that suspicion based on facts, information, and/or intelligence which are relevant to the likelihood of finding an article of a certain kind, or in the case of searches under section 43 of the Terrorism Act 2000, the likelihood that the person is a terrorist. (2005: para 2.2)

This still leaves room for the suspicion of certain groups over others, and this was acknowledged in the Code:

Reasonable suspicion can never be supported on the basis of personal factors alone without the supporting intelligence or information. For example, a person’s colour, age, hairstyle or manner of dress, or the fact that he is known to have a previous conviction for possession of an unlawful article, cannot be used alone or in combination with each other as the sole basis on which to search that person. Reasonable suspicion cannot be based on generalisations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity. (2005: para 2.2)

Sanders and Young note the remarkableness of a legislative code of practice directing that in effect, people should not be stopped and searched because they are black. ‘The provision is a rare example of the law attempting to take into account the social reality of policing on the streets’ (Sanders and Young 2000: 87). This directive was undermined through an addition to the 1997 version of the Code, advising that reasonable suspicion could be based upon ‘reliable information or intelligence which indicates that members of a particular group or gang, or their associates, habitually carry knives unlawfully or weapons or controlled drugs’ (1997: para 1.6A). This was expanded on in para 1.7AA that provides that where police have information about a gang, whose members ‘wear a distinctive item

of clothing or other means of identification to indicate membership,' simply being identifiable in that way will constitute reasonable suspicion.

Searches made under section 60 of the Criminal Justice and Public Order Act 1994, as amended by s.8 of the Knives Act 1997 or section 44(1) and (2) of the Terrorism Act 2000 require an authority but not reasonable suspicion. The powers granted under section 60 allow an inspector or higher ranked officer who reasonably fears serious violence or the carrying of weapons in a particular locality to authorise uniformed officers to search any person or vehicle in that locality for weapons for a period of 24 hours. Subsection 3 allows a superintendent to extend this authorisation for a further 24 hours. Rowe (2004) notes the increase in the number of section 60s being authorised and suggests that the increase might be partly explained by the fact that inspectors can authorise the use of the powers, rather than the higher-ranking superintendents whose authorisation was required when the legislation was first introduced. Section 44 of the Terrorism Act 2000 gives police the power to stop and search persons without reasonable suspicion in an 'authorised' area, as designated by the Home Secretary every 28 days. Between 2001 and 2004, the whole of London was designated as an area at risk of terrorism, thus this power could be used anywhere in the city (Statewatch 2004). This has now been reduced to five central boroughs but there remains no written justification as to the selection of these boroughs. Recent figures demonstrate that the powers that do not require reasonable suspicion are being used disproportionately against ethnic minorities (Bowling and Phillips 2003).

In addition to clarifying the meaning of reasonable suspicion, the Code made provision for the recording of all stop and searches. Officers are required wherever practicable to provide the person who has been stopped with a record of the encounter, which includes

the grounds for the search, the object/s that officers are looking for, the outcome and the name and station of the officer/s conducting the search. The record also contains personal details of the person searched such as name, address, ethnic origin and a description, all of which the person can refuse to give. The purpose of requiring a written record is threefold. It is hoped that in the act of informing the public of the recording requirement that officers will consider carefully their grounds for making stops and thus be inhibited from making stops arbitrarily. By providing a written record of an incident and information on how the public can complain it is believed that it will promote openness and secure the trust and confidence of the public. Finally, the monitoring and publication of search statistics provide a management tool for supervisors to identify where officers might be incorrectly using powers (Young 1994; Sanders and Young 2000; Rowe 2004). These codes were reinforced by section s.67 of PACE, which makes failure to comply a disciplinary offence and makes breaches of the codes admissible as evidence in any criminal or civil proceeding, under the discretion of the judge/s. These measures were strengthened in the 2003 Code, which highlighted the applicability of the Race Relations Amendment Act 2000 to stop and search and policing practice in general and withdrew the right of officers to conduct voluntary searches.

In the years following the introduction of PACE, research has followed three broad and often over lapping directions. The first looks at the effectiveness of PACE in regulating police behaviour, as measured against its stated aim. The second looks at patterns of the use of stop and search, with regard to variables of ethnicity, age gender and class. The third attempts to explain these patterns of use and to some degree justify them by exploring the effectiveness of stop and search with regard to crime prevention and control.

The limitations of PACE

Various commentators expressed early scepticism about the provisions introduced under PACE. These centred on the contradictions of legal regulation, the interpretation of reasonable suspicion and the problematic concept of 'consent.' One of the key criticisms has rested on the difficulty of regulating police behaviour through legal rules. Discussions of policing and the law range between those that treat police officers as automatons and view policing as essentially the following of rules derived from the law (Allen 1976) to those that emphasise the virtual irrelevance of formal law over police discretion (Muir 1977). In reality, the relationship between the law and policing is a complicated one, depending on the type of policing, the type of rule and their socio-political contexts (Dixon 1997). Stop and search is a prime example of low visibility policing. It takes place on the street, away from the gaze of supervisory officers, thus allowing the officers involved vast discretion over whether or not to invoke formal powers. Bridges and Bunyan (1983: 86) argue that many of the provisions in PACE were the product of the 'highly assertive evidence presented to the Royal Commission by various police spokesmen and pressure groups. Civil libertarian concerns were noted by the Royal Commission and partly addressed in the safeguards protecting suspects' rights. The resulting compromise between the two ensured that PACE received a critical reception from policing bodies and civil libertarians alike (Dixon 1997). Some have argued that PACE merely provided a statutory acknowledgement of existing police practice in the area of stop and search (Hansen 1986; Sanders and Young 2000), while the safeguards would prove to be an administrative nuisance for the police without any real benefits for the suspects (Stone 1986).

Reasonable suspicion

PACE recognised the possibility of stereotyping of ethnic minorities and attempted to control the arbitrary use of stop and search through the necessity of a threshold of reasonable suspicion. Hansen (1986) observes that 'reasonable suspicion' was supposedly a criterion for the exercise of stop and search prior to PACE and was even then loosely interpreted. Despite attempts to define reasonable suspicion in successive Codes the concept remains vague. The few cases on reasonable suspicion that have reached the courts have done little to define it (Sanders and Young 2000). This is reflected in the great variation in police officers' understanding of the concept (Bottomley, Coleman et al. 1991; Young 1994).

One of the first studies of the operation of stop and search under PACE was conducted in 1991 by Bottomley, Coleman et al. in a force in the north of England. From an examination of stop records, they concluded that it was doubtful in some cases that the threshold of reasonable suspicion had been met. Officers often had their minds on a number of issues other than levels of suspicion when deciding whether or not to stop someone. PACE treats stop and search as an incident rather than a social process. Reasonable grounds for suspicion must be present *before* a stop is made with the intention of conducting a search. Bottomley, Coleman et al. found that in reality police work is not so neatly segmented: the decision about whether events constitute a PACE stop and search are just as likely to be made *during* and *after* the event and to be dependent on what happened during the whole process. The researchers conclude that the majority of officers did not feel unduly affected by the introduction of a more restrictive concept of reasonable suspicion in PACE.

A NACRO experiment in Tottenham in 1995 also suggests that the criterion of reasonable suspicion is not always a constraint on police use of stop and search. The brainchild of a local MP and the police commander, the Tottenham experiment attempted to increase the understanding of stop and search powers amongst police officers and the local community. For a year, officers were required to issue a leaflet to people stopped and searched informing them of the powers being used and their rights. During the duration of the project, recorded numbers of stop and search fell by 52% in Tottenham, while in the control area of Vauxhall there was no reduction (NACRO 1997: 53). Although numbers had begun to fall before the experiment started, it is likely that distributing the leaflet concentrated the minds of the officers on the rules and inhibited their use of the power. Although participating officers felt little had changed and some community groups questioned if stop and searches had continued in a 'consensual' manner, the experiment suggested that in normal circumstances the police failed to adhere to the criterion of reasonable suspicion (NACRO 1997).

Bottomley, Coleman et al. (1991) themselves question whether officers can be required to make distinctions in levels of suspiciousness when the criterion of reasonable suspicion fails to reflect the practicalities of policing. Dixon, Bottomley et al (1989) point to the difficulties for officers of operating on individualised suspicion. They use the example of officers stopping and searching someone at night in an area with high rates of burglary. Unless a burglary has been reported that specific night, their action would not be justified under the requirement of reasonable suspicion. The officer may not know of reported burglaries but his or her experience has taught them that a burglary will almost certainly take place in that area during their shift (1989: 191). They argue that the guidelines focus erroneously on stereotypical suspicion and fail to take into account suspicion based on

incongruity – being where one does not belong. This notion of suspicion is deeply rooted historically in the policing mandate and highly valued in police culture. Officers believe that developing an understanding of this type of suspicion can only be gained by experience on the streets, thus ‘its rooting in the culture of police work makes it highly resistant to attempts at external influence and change’(1989: 189). Young (1994) also challenges the idea that reasonable suspicion should be based on objective and individualised suspicion. He argues that ‘democratic suspicion,’- the suspicion of all citizens equally - is a nonsense. For example, a young man carrying a bag late at night is likely to elicit suspicion, whereas an elderly lady carrying a similar bag is not. It is this ideal, that he sees as underpinning the PACE guidelines, that makes them untenable. Instead suspicion, he argues, should be based on ‘the working principles of police practice’ (Young 1994). Stereotyping is inevitable and necessary, but to avoid stereotyping leading to discrimination against ethnic minorities, it must be based on objective information from the public, police observations and crime statistics. Nevertheless, he concludes that the majority of such stops will be unproductive. Young fails to acknowledge that many of the working observations and crime statistics are the product of police action and so serve to reinforce existing prejudices and the disproportionate targeting of ethnic minorities (Bowling and Phillips 2002).

Consent and voluntary stops

‘Consent’ represented another major weakness in the strategy of legal regulations to delimit police powers (Dixon, Coleman et al. 1990). In April 2003, PACE abolished the right of the police to carry out ‘voluntary’ or ‘consensual’ stop and searches. The requirement of reasonable suspicion, the recording of stop and searches and the legal protection granted to suspects could be circumvented if the suspect had voluntarily consented to be searched.

Consent in practice encompasses a range of states from approving agreement to grudging compliance. There are two important components of consent, these are *knowledge*, the information required to understand the request and *power*, the ability to make choices on the basis of that knowledge (Dixon, Coleman et al. 1990). The nature of the relationship between the police and citizens makes an equality of power unlikely. Few people have detailed knowledge of the PACE regulations and so assume that the police must have the right to stop and search them; they therefore agree voluntarily to the occurrence (Young 1994; NARCO 1997). Dixon, Coleman et al. (1990) interviewed almost 2,000 officers and found that of those that were operational, each made less than one recorded stop and search annually. This was in contradiction to their observations of street policing and reports from officers, where they would expect to carry out four or five stop and searches on a late shift (1990: 347 – 349). Consent bridged the gap between the records and reality. Often officers used the process of trying to gain consent to assess suspiciousness. As the truism insists, only the guilty have reason to resist. If the ‘consensual’ nature of a search is disputed, it will usually boil down to the suspect’s word against the officer’s. Without a written record of the search (assuming that it had been accurately completed) there is no evidence that the search even took place. The social processes involved in a stop and search cannot be neatly divided into discrete actions. An encounter may begin with a consensual conversation, which may lead the officer to become suspicious and the suspect impatient. The use of voluntary searches allows officers to circumvent the rules. Recent research conducted by the Home Office suggests that officers are still conducting voluntary searches (Quinton and Olagundoye 2004).

Record-keeping and supervision

PACE places importance on the maintaining of search records that can be scrutinised by supervisors as a safeguard against abuse. Dixon, Coleman et al. (1990) argue that much of the non-recording stems from the irrelevance of the PACE provisions in practical policing situations. In their study, Bottomley, Coleman et al. found that many forms did not provide enough information to determine whether reasonable suspicion was present. They were thus of limited use for monitoring purposes. Officers had little expectation that supervisors would check forms and supervisors themselves mentioned that they rarely did. The Tottenham experiment also found that the recording of stop and searches on 5090 forms were 'a form of accountability on paper only, which has little credibility for anyone concerned – the person being stopped and searched, the officer carrying out the search, or the sergeants and inspectors supervising the officers' (NARCO 1997: 12). Their examination of search records found clear uniformity and standard phrases written in the section on the reason for the search. Certain stock phrases such as 'person became evasive when approached by the police,' were used repeatedly, and almost all the forms had been initialled by a supervisor. Thus supervisors were accepting search records presenting inadequate grounds of suspicion for stop and searches. Bottomley, Coleman et al. (1991) argue that where formal records are made, this may be the result of other factors rather than legal constraints, such as the failure to secure consent, the need for officers to protect themselves when a search has led to an arrest or the recording of a search for intelligence purposes.

Legal rules or something else?

PACE fails to present a set of legal rules specifying the limits of police practice in a clear, unambiguous and strictly enforceable way. McBarnet (1981) argues that although some element of discretion is inevitable, the British law takes an unnecessarily permissive stance to police powers, which could be regulated more tightly. Thus the framing of police stop and search powers in vague and elastic rules allows the 'political and judicial elite' to effectively condone police deviation. Once on the books, rules in themselves are not of equal influence. Although emphasis is often put on legal rules, it is necessary to recognise that rules may also come from other sources, such as occupational cultures. There is often a gap between formal rules and procedures and the types of behaviour that police officers find acceptable (Smith 1986). Smith and Gray's (1983: 171) typology of rules governing police behaviour is useful here:

Working rules are those that are internalised by police officers to become guiding principles of their conduct. Inhibitory rules are those which are not internalised but which police officers take into account when deciding how to act and which tend to discourage them from behaving in certain ways in case they should be caught and the rule invoked against them. Presentational rules are ones that exist to give an acceptable appearance to the way that police work is carried out... Most of the presentational rules derive from law and are part of a (successful) attempt by the wider society to deceive themselves about the realities of policing.

Thus PACE, ostensibly intended as an 'inhibiting rule', is in effect 'presentational'- enabling and indeed legitimising policing behaviour governed by officer's 'working rules' or assumptions. Consequently, rather than inhibiting police behaviour, PACE provided a flexible resource that the police could choose whether or not to utilise in the pursuit of their objectives. The law does not set policing objectives. Instead they are a corollary of the officers' priorities on the street, organisational policy, national politics and local community demands. Smith (1986) argues that stop and search typifies those aspects of

police activity that cannot be effectively controlled by legal rules. He instead expresses faith in administrative controls rather than legal means of controlling police action.

Other commentators have been less pessimistic about the scope of legal regulation.

Baldwin and Kinsley (1985) suggest that the law does have a role in police regulation, albeit a limited one. The law provides a body of rules that may act as a marker for the limits of police behaviour, although not precisely control it. They note that rules are not self-executing – an apparently ‘presentational’ rule may be made inhibitory by means of ‘organisational and institutional changes’ (1985: 91). It is thus necessary to identify how PACE has been implemented and the institutional and cultural factors that have hindered or helped its execution. Dixon, Bottomley et al. (1989) considered the introduction of PACE into the Northern Force they researched and identified five shortcomings which had hindered the effectiveness of the legislation. Firstly, reasonable suspicion is too individualistic to deal with the practical realities of policing. It remains ill defined and vague. Secondly, in order to change the working practices and assumptions of officers, it would have been necessary to present PACE as a new, complete code of police powers and then to train officers on how to operate within it. The authors conclude that the authorities had failed to realise how fundamental the re-training was to the successful introduction of the new concept of stop and search. It should not have been taken for granted that officers would be able to apply legal criteria to practical situations requiring quick decisions. Hence, the research evidence shows that officers tend to apply non-legal criteria. Thirdly, PACE was introduced amidst political controversy and considerable police discontent, the reaction of many rank and file officers was to view PACE as something ‘to be got around,’ such as by ‘re-defining’ situations as falling outside PACE, so its requirements would not have to be followed (1989: 192). Fourthly, they argue that the sanctions for failure to

comply with PACE and the Code are inadequate. Few people make official complaints about the use of stop and search and the possibilities for supervision are limited. They also note that courts have expressed their unwillingness to use criminal trials as an appropriate venue for disciplining police action. Finally, public knowledge of police powers is limited, meaning that it is easy for officers to engineer consent and by-pass the criteria of reasonable suspicion. Dixon, Bottomley et al. believe that these shortcomings can be remedied and point to the need to explore how administrative controls and structural changes can work alongside legal regulation of policing.

Patterns of stop and search use

The provisions encoded in PACE were designed to eliminate arbitrary use of stop and search. One measure of this aim might be fewer searches or an increase in productivity marked by an increase in arrests from stops and searches in the years after the introduction of PACE. There are methodological problems in making comparisons in the number of searches pre- and post-PACE (Brown 1997). Prior to the introduction of PACE forces were only required to record stop and searches under the Misuse of Drugs Act 1971 and the extent of under-recording under this power is unknown (Brown 1997). Many pre-PACE studies on stop and search (Smith and Gray 1983; Willis 1983; Brown 1997) focused solely on London, which is in many respects a unique case. Official statistics on stop and searches under s.1 of PACE show a steady rise year on year in the number of searches recorded by the police (Brown 1997). The number of recorded stops and searches increased six fold from 109,800 in 1986 to 690,300 in 1995 (FitzGerald and Sibbitt 1997: 40). In 2003/4, marked the first fall in stop and searches under s.1 to 7300,000 stops and searches (Home Office 2005: 7). Numbers rose again in 2004/5 to 838,700 stops were conducted under PACE s.1 (Home Office 2006a: 10). The fall could be attributable to the

changes in recording practices, which allows stop and stops and searches to be recorded separately (Home Office 2005). Even these figures might be a substantial under-estimate of the true numbers of stop and search, when compared to other measures such as the British Crime Survey, due mainly to the under-recording by officers and unrecorded voluntary stops (FitzGerald and Sibbitt 1997).

Measuring the ‘effectiveness’ of stop and search

The measure that has traditionally been used to determine the ‘effectiveness’ of stop and search is the proportions that lead to arrest. This has steadily declined since the introduction of PACE from national figures of 17% in 1986 to 12% in 1994 (Brown 1997: 12) to 9% in 2000 (Miller, Bland et al. 2000: 10). This figure rose slightly to 13% in the year 2002/3 (Home Office 2004: 18) but fell to 11% in 2004/5 (Home Office 2006b: 21). The arrest rate varies according to the reason for the search. Searches for offensive weapons and drugs are more likely to lead to an arrest while searches for ‘going equipped’ to commit a crime are least likely to result in an arrest (Home Office 1995). Arrest rates also vary greatly between forces. This is possibly a reflection of differing recording practices but also differing policing styles and use of stop and search (Brown 1997). Young’s (1994) study of the Islington Borough in North London found an arrest rate of 8% from stop and search. Almost half of the arrests in Young’s sample were for drug offences, in particular cannabis. There is little research exploring the eventual outcome of cases that were the result of stop and search. Young found that only 40% of arrests following a stop and search result in guilty verdicts. He does not provide figures for cautions or a comparison with results of arrests from other forms of policing. Young concluded that the contribution of stop and search to arrests is ‘minor’ and argues that it

should be re-examined in the context of the potential damage it does to police/public relations.

Phillips and Brown's (1998) study of seven police forces including the Metropolitan Police Service, builds on Young's work, attempting to chart the results of stop and search arrests. Their findings show that 11% of stop and searches led to arrests but that 67% of those arrested as a result of a stop and search were charged or cautioned, while the figure for those arrested otherwise is 69% (1998: 38). However, they also noted a marked variation in the rate at which different kinds of stop and search led to charge or caution. Thus, only 51% of those arrested for stolen property after a stop and search were charged or cautioned compared with 73% of those arrested following a drug stop and search (1998: 37 - 38). They also found that black suspects arrested following a stop and search were less likely than whites to be charged or cautioned and more likely to be NFAed (No Following Action taken). They argue that this suggests that the police may be prone to arresting suspects in some situations where the threshold of reasonable suspicion had not been reached.

Who is stopped?

One of the most consistent empirical research findings is that black people are disproportionately more likely to be stopped and searched by the police than white people when measured against their representation in the general population. The picture for Asian people appears to be more mixed with findings from the early 1990s suggesting they are likely to be stopped in lesser or equal numbers than whites (Brown 1997). This has changed since the introduction of the Terrorism Act 2000. The explanations for the racial disparity in stop and search rates differ greatly. Observational data as well as the anecdotal experiences of ethnic minorities point towards racial bias in the decision-making of

officers on the street. This has been countered by arguments suggesting that black people are disproportionately stopped and searched due to greater offending rates (Smith 1994) or that aggressive behaviour of black suspects during encounters leads to increased formal action being taken (Waddington 1983). Others have pointed to socio-demographic factors such as age and class or pointed to the spatial deployment of officers that ensure ethnic minorities are more likely to be in the target group selected by the police.

Norris, Fielding et al.'s (1992) observational study of two divisions in London and one in Surrey found that black people were two and a half times more likely to be stopped than their presence in the local population suggests (1992: 212). The probability of being stopped was not equally spread; being young, a male or already known to the police increased the likelihood of stops and searches but skin colour was the key determinant to the relative intensity of surveillance by the police. They found that the police stopped blacks on speculative grounds more often than whites, in the hope that they would discover something during the encounter. In only 44% of stops of black people was there an obvious reason for the encounter compared with 58% in stops of white people (1992: 215).

Norris, Fielding et al. also observed demeanour during encounters with the police. It has been suggested that the disproportionate arrest rates of blacks is the result of disrespect shown towards police officers by black people, meaning they are more likely to be arrested than dealt with informally (Waddington 1983). Their observations demonstrated that skin colour is not a significant predictor of demeanour displayed towards the police. Black and white people are equally likely to be calm and civil towards the police at both initial contact and processing. Although the effects of having observers present cannot be

discounted, 40% of black people stopped had formal action taken against them, compared with 31% for whites stopped (Norris, Fielding et al. 1992: 215).

In a local survey of stop and search in the London Borough of Islington, Young (1994) found substantial difference in stop rates amongst ethnic groups. Many studies have used the ethnic classification system used by the police. This is based on the Police National Computer (PNC) six-point classification codes³; categories include white European, dark European, black, Asian, Oriental or other. This is often simplified further to just four categories – black, white, Asian and ‘other.’ Using a wider classification system, reflecting the diversity of the local population, Young found that African-Caribbeans and the Irish are over-represented in stop and search as compared to their proportion of the local population. One in ten of the black population, and indeed, over one in two young African-Caribbean males were subject to stop and search. In terms of incidence, rather than prevalence, this worked out as 78 stops per hundred of the black population and 14 stops per hundred of the Irish population (1994: 73). Young argues that this extraordinary degree of discriminate focusing can have no justification in terms of prevalence of likely offenders. Interestingly, Africans were under-represented in stop and search figures in Islington. Young believes that age and social class (determined by indicators such as education, occupation and housing tenure) are important factors in the explanation of this pattern. Africans in the area were predominantly students and professionals; the Irish were overwhelmingly working class, whereas the English, Welsh and Scottish groups, with low stop and search rates, were heterogeneous in class terms. Young himself observes that age and class can only provide a partial explanation. Amongst the English, Scottish and Welsh group, the focus on stop and search was on young and working class males. On the other hand, Irish stop and

³ In 2003, the police classifications were expanded to a 16+1 code.

search had a working class focus but an extremely wide age range, including those over 45. While stop and searches of African-Caribbeans were disproportionately high irrespective of class and, although it had a wide age range, stop and searches dropped off after the age of 45. Young concludes that 'African-Caribbeans are focused upon because their very appearance generates suspicion in terms of stereotypes held by the police in their working practices' (1994: 65).

The Tottenham experiment (NACRO 1997) produced interesting results. Although the overall numbers of stop and search fell during the course of the experiment, the over-representation of African-Caribbeans stopped and searched remained the same. In the 12 months prior to the leaflet being introduced, around 44% of those stopped and searched were African-Caribbean, while people of African-Caribbean descent make up only 24% of the local Tottenham population. This rose to 46% during the experiment (1997: 22-24). The interviews with the officers revealed some important indicators regarding their use of stop and search. Firstly, there was a backlash against the external criticism of their use of their powers. Secondly, officers reported that their decisions to stop and search people were often based on crime reports, which focuses attention on areas and victims' descriptions of those connected with specific incidents. In the period August 1995 to May 1996, for example, the victims of street robbery described 81% of the suspects as black, thus explaining the over-representation of black people amongst those searched (1997: 24). Those subjected to stop and search powers often commented that they felt that it was enough to be young and black to be seen as a suspect. The authors' note that descriptions of black suspects were often limited to, say, 'young black man in jeans' which meant there were usually many potential suspects. In comparison, descriptions of white suspects had more details. 'Although probably unintentional, there is an uncomfortable nuance here of

‘they all look the same’ (1997: 56). Previously, Young (1994: 33) has suggested that officers may be generalising the colour of the suspect to other crimes such as burglary and drug offences where there is no witness information.

FitzGerald and Sibbitt’s (1997) report draws on in-depth studies in four police areas and discussions with a wide range of police officers. They find that suspicion falls on young males, particularly from ethnic minority groups. Intelligence, such as crime reports or witness statements are supplemented with a wide range of other less formal types of information, such as gossip, anecdote and casual observations. Intelligence appears to be shaped, consciously or otherwise, by perceptions built up by individuals over time, reinforced by colleagues and validated, in turn, by experience. Thus, ‘commonsense’ understandings of ethnic differences in offending have been reinforced over the years and have lead to a generic view of whole groups. These collective views can be positive as well as negative. The white majority is large and diverse and most officers belong to it. They differentiate within it, often dividing between people that are ‘respectable’ and those that are not. Even offenders are differentiated between ‘likable villains’ and those that deserve scorn. FitzGerald and Sibbitt found that black people, on the other hand, seem less likely to benefit from internal differentiation and are viewed collectively. This is bolstered by collective memories of black participation in riots and perceived aggression and hostility towards the police. Black people are stereotyped as suspicious, naturally aggressive and more likely to be involved in specific crimes, such as street crimes and burglary. The collective images of Asians were less clear-cut; they were no longer seen as a relatively unproblematic group, but as being increasingly involved in crime and as being hostile and antagonistic towards the police. These negative views were held particularly in areas where Asians groups were the prominent minority. FitzGerald and Sibbitt found that

these views were widely held amongst officers interviewed, but argue that it does not necessarily hold that officers that normally behave professionally will cease to do so with ethnic minorities. However, it may mean that officers are more receptive to, and thus in turn, generate 'intelligence' that goes with the *grain* of these perceptions. This will amplify any collective tendency to regard black people as more suspicious and intensify the attention they receive. They conclude that by implication, where police officers do abuse their powers black people are disproportionately likely to be victims of this abuse.

FitzGerald and Sibbitt highlight the importance of understanding other factors that come into play in the analysis of stop and search statistics and other ethnic data monitoring. They note the importance of force objectives and local policing priorities in determining the pattern and frequency of stop and search use. Secondly, they observed the very high levels of stop and searches of 'prominent nominals', those already known to the police. Although previous contact with the police should not in itself be the reason for a stop and search, a much higher proportion of these people fall within the net of local police intelligence. FitzGerald and Sibbitt found that in one division of the MPS, of 46 'prominent nominals,' six were recorded as having been stopped and searched 25 times or more; and the average was eight (1997: 49). A third factor is 'suspect availability.' The effect of the heightened suspiciousness of black people is compounded by factors related to location and timing of searches. They report three 'commonsense' explanations given by officers as why young black people are more 'available' to be stopped and searched than white people. Firstly, young black people have higher rates of unemployment than white people, thus they are more likely to be on the streets during the day and out later as they do not have jobs for which to get up early. Secondly, black pupils have higher rates of school exclusions than white pupils so are likely to be available to be searched. Finally,

FitzGerald and Sibbitt cite the British Crime Survey 1994, which suggests that black people are more likely to go out in the evenings than people from other ethnic groups. These observations require further research. Other ethnic groups and social classes have high employment rates and/or high numbers of either school exclusion or truancy, yet are stopped at different rates. This still does not explain why young black men are targeted for increased surveillance by the police or why some areas are focused on over others.

The Lawrence Inquiry and Macpherson Report

Stop and search and its application was not the focus of the Lawrence Inquiry but it became central in the resulting report and discussion. Almost two decades after the publication of the Scarman Report questions of policing, racial discrimination and fairness were back on the public agenda. This time, the focus was not on disorder but on the threat of violent racism to black and Asian communities (Bowling and Phillips 2002). The catalyst for this soul-searching was the murder of Stephen Lawrence, a black teenager stabbed to death in a racist attack by five white youths. After a failed police inquiry, the collapse of both the prosecution case and a subsequent private prosecution, the family of Stephen Lawrence requested a public inquiry (Cathcart 1999). The public inquiry chaired by Sir William Macpherson found that fundamental errors had marred the murder investigation resulting from 'a combination of professional incompetence, institutional racism and a failure of leadership by senior officers' (Macpherson 1999: para 46.1). After holding public meetings in London, Manchester, Bradford, Bristol and Birmingham, and taking written evidence from academics and interest groups, Macpherson identified a lack of 'confidence and trust' in the police amongst ethnic minorities. This was the result of the police failing to respond adequately to racial violence, but also more widespread concerns about the use of stop and search, police brutality and deaths in custody, racial discrimination and a lack

of accountability in the police service. Quoting David Muir, representing senior Black Church Leaders, the report concluded that ‘the experience of black people over the last 30 years has been that we have been over policed and to a large extent under protected.’ The Report made 70 recommendations, amounting to one of the most extensive programme of reform in the history of policing (Bowling and Phillips 2002). The Report recommended vigorous inspections and the extension of race relations and anti-discrimination legislation to include the police service. Other recommendations focused on improvements in the handling of racist incidents, victims and witnesses and in the processing of complaints and subsequent disciplinary action. It also recommended improved training in racism awareness, cultural diversity, and family liaison and revised recruitment and retention policies. In response to the recommendations the Home Secretary accepted 56 in full and five in part, including that a ‘Ministerial Priority’ be established for all police services ‘to increase trust and confidence in policing amongst ethnic minority communities’ (Home Office 1999: 3).

The Macpherson Inquiry recognised the importance of stop and search in discussions on equality and police. The Report (1999: para. 45.8 – 10) concluded:

While we acknowledge and recognise the complexity of the issue...there remains, in our judgement, a clear core conclusion of racist stereotyping.

We are clear that the perceptions and experiences of the minority communities that discrimination is a major element in the stop and search problem is correct... It is pointless for the police service to try and justify the disparity in these figures purely or mainly in terms of the other factors, which are identified... whilst not being seen vigorously to address the discrimination which is evident, simply exacerbates the mistrust.

Yet like Scarman before him, Macpherson argued that ‘the powers of the police [to stop and search] under the current legislation are required for the prevention and detection of crime and should remain unchanged’ (1999: Recommendation 60). The Inquiry makes no

attempt to explain why it reached this conclusion (McLaughlin and Murji 1991). Instead, Macpherson recommended that ‘all stops under legislative provision, including voluntary stops, should be recorded and that the self-defined ethnicity of the person stopped should be recorded. A copy of the record shall be given to the person at the time of the stop’ (Macpherson 1999: Recommendation 61). Police Authorities should be given a duty to ensure that stop records are monitored and analysed and this information and analysis published and to undertake publicity campaigns to ensure that the public are aware of the stop and search provisions and their right to receive a record in all circumstances. The Macpherson Report does not specify how these changes will impact on fairness, accountability and trust in the police service. The government accepted both recommendations, however they suggested that they should be piloted in order to evaluate the feasibility in practice of different approaches (Home Office 1999).

A range of important issues emerges from the research conducted in the wake of the publication of the Macpherson Report. This research traces the patterns in the use of stop and search, reaching a broad consensus that minority groups remain over-represented in stop and search but there remains little agreement about the causes of disproportionality. Debates have focused on one hand on claims of police discrimination; and on the other hand, claims of differential rates of offending and demographic and cultural differences amongst ethnic groups have been used to explain, and justify disproportionality in police stop and search use (Miller, Bland et al. 2001).

FitzGerald’s (1999) study, conducted for the Metropolitan Police Service (MPS), evaluated the results of the first year of a programme of action to improve police searches covered by s1 of PACE. FitzGerald found general support for the power to stop and search, provided

it is used properly. High levels of support amongst the public for stop and search were also displayed by officers interviewed by FitzGerald, who despite acknowledging the problems involved saw the powers as essential to tackle crime. FitzGerald found percentages of arrests resulting from stop and searches differed greatly depending on area, reason for arrest and whether they were high or low discretion stops. Arrests were more likely to occur as a result of 'low discretion' searches – those that are conducted on the basis of information given to officers from sources rather than proactive 'high discretion' searches. The categories used by police for collating records are drugs, stolen property, offensive weapons, firearms and going equipped (by implication for burglary or theft). The majority of arrests were for drug offences, three quarters of these for the possession of cannabis (1999: 58), although several public opinion surveys have showed that drug use, in particular cannabis use, scored very low on the list of the public's priorities for police action. Burglary, highest on the list of public concerns receives the lowest percentage of arrests from stop and search.

In the face of low arrest rates, FitzGerald explores a number of other crime fighting benefits derived from stop and search, such as intelligence gathering and the prevention of crime. Intelligence within the London Boroughs studied is stored electronically and is centrally accessible within each local area. The search database helps track movements of known individuals and their associates. This intelligence is mapped onto information on reported crime. Indeed, amongst the officers interviewed by FitzGerald, many seemed to hold the view that the main purpose of searches was to keep track on the movements of 'known individuals.' FitzGerald notes that conducting stop and search for intelligence purposes throws up a number of legal and practical problems. Searches conducted primarily to gather information are tantamount to harassment of certain individuals on the

grounds of previous criminal convictions or associations and cannot be justified in terms of PACE. There is also no empirical data that the intelligence gathered during stop and search is information that could not be gathered by other means without the intrusion. FitzGerald then considers the prevention of crime as another benefit of stop and search. The most direct mechanism is the disruption of offenders who are about to commit crimes. For example by intercepting those in the possession of offensive weapons, firearms or equipment that could be used for burglary a subsequent offence is prevented. It is possible that in the longer term searches that lead to the arrest and conviction of prolific offenders may prevent future crime, but again there is little empirical evidence presented to support this assertion.

FitzGerald considers the pattern of stops and searches, finding considerable variation in the extent the power is used from one policing area to another and the types of crime on which it is focused. Within any division, search activity it is not evenly spread - it takes place within a limited number of locations and varies considerably by the time of day. The peak times for searches are between 2pm and 6pm and 10pm and 2am. FitzGerald finds that most of the people searched in all areas are young men, aged between their mid-teens and mid-thirties. Nearly half of those stopped and searched did not live within the area where the search took place. Overall, half the people stopped and searched had previous cautions or convictions. Only a very small number of people were subject to repeat stops and those that were had previous convictions. FitzGerald concludes that 'reasonable suspicion' is frequently absent from stop and searches; indeed she notes that it is often common practice to develop the grounds *after* a stop and search has been made. Furthermore, the power is often not being used for catching suspects, but instead 'gaining intelligence' (particularly on 'known individuals') and 'social control' by 'disrupting,' 'breaking up' or 'moving on'

groups of young people in London. This is unjustifiable under PACE and results in the harassment and dissatisfaction of certain groups. FitzGerald draws particular attention to the increase in stops and searches of young Asian men. Since a proportion of these stops lead to arrests, usually for the possession of cannabis, young people without previous criminal records stand to be criminalised as a result.

Home Office research

In response to the Macpherson Report, the Home Office's Policing and Reducing Crime Unit was commissioned to carry out a programme of research on stop and search. This programme resulted in six reports each focusing on a different aspect of stop and search (Police Research Series Papers 2000, 127 – 132).

The first research report, conducted by Miller, Bland et al. (2000) studied the impact of stop and search nationwide on crime and the community. The research drew on Home Office statistics, existing literature, interviews with over 100 officers and 340 hours of observation of police officers at work. They found that stop and searches appear to have a minor role in the detection of offenders for the range of crimes that they appear to address. Searches are used most often to detect stolen property and drugs and this is reflected in the arrests from searches. It is also likely that certain classes of offence, such as drug possession make a substantial contribution to overall arrest figures. The most effective searches are for offensive weapons (14%) while searches for 'going equipped' are the least successful (5%) (2000: 17). Miller, Bland et al. note substantial variation between forces in the extent to which stop and search is used and the number of arrests resulting from its use. Surprisingly, forces with similar levels of crime record different levels of stop and search activity, which may reflect different policing styles. For example, while Cleveland records

101 searches per thousand population its most similar force in size, Humberside, records only six (2000: 12). It also does not follow that stop and search is used more extensively in areas that experience higher rates of crime. Nor does the use of stop and search impact on forces general clear-up rates. Forces with high levels of arrests from stop and search achieve only low primary clear-up rates, while other forces with low levels of arrests from a stop and searches achieve good clear-up rates (2000: 22). Overall, they conclude that forces have come to rely to varying degrees on stop and search as a contribution to police work. This disproves the basic premise adopted by both Scarman and Macpherson, that stop and search is 'required for the prevention and detection of crime.'

Miller, Bland et al. go on to explore the assertion that stop and search is an important tool in the prevention of crime (FitzGerald 1999; Macpherson 1999). They find that searches only have a limited disruptive effect on crime by intercepting those who are about to commit an offence. It is also unclear to what extent, if any, searches undermine criminal activity by taking prolific offenders off the streets. In relation to drugs, it is even less likely that drug-markets or drug-related crime is undermined as drugs searches tend to focus on users rather than dealers and within the two police force areas in their study 94% of drug searches were on the expectation of finding cannabis (2000: 31). FitzGerald's (1999) study introduced the suggestion that searches can act as a deterrent to criminals. A distinction can be made between 'general' and 'marginal' deterrence. General deterrence refers to a potential offender not committing a crime because of a general possibility that they might be caught, whereas marginal deterrence refers to changes in offending behaviour caused by the likelihood of getting caught. To test the effect of marginal deterrence on searches Miller, Bland et al. examine changes in the levels of searches compared to changes in the levels of crime. Analysis of data from the Metropolitan Police Service from April 1993 to

September 1999 found a negative relationship between the levels of searches and levels of recorded crime (2000: 33). Thus there is little solid evidence that searches have a deterrent effect on crime and it is possible that where searches are used intensively in one area that the result might be localised deterrence or the displacement of crime to another area.

Miller, Bland et al. finally turn to the general contribution of stop and searches to intelligence. Since searches under s.1 of PACE cannot be justified on the basis of gathering intelligence, this must only be seen as 'added value' on searches conducted for other reasons. The approach to gathering of intelligence is, at best, patchy. Miller, Bland et al. instead suggest that intelligence of the sort associated with stop and searches could be gathered from conversations and observations without the intrusion of a stop and search.

The second research report, 'Upping the PACE?' by Bland, Miller et al. (2000) evaluated the recommendations made by Macpherson on stop and search. Recommendation 61 suggested that the police should record all stop and stop/searches of the public and that a copy of the record, including the reason for the stop, the outcome and the person's self-defined ethnicity, should be given at the time of the stop. This recommendation was piloted in five police areas for six months finishing in May 2000. The researchers encountered significant under-recording of stop and searches, with perhaps as many as two-thirds going unrecorded. The pilot did little to improve overall recording rates. This was perhaps the result of officers' lack of clarity as to which types of interaction constitute a stop and officer non-compliance. The piloting of different recording practices did not affect the rates or patterns of stop and search used in the areas studied. But during interviews, some officers said that the pilot had changed their 'mind-sets' and encouraged them to give more thought to the reasons for stopping a person. Echoing the findings of the Tottenham experiment, some officers articulated negative opinions about the pilot; they

found providing an explanation for why the power was being used and completing the record an imposition. The pilot found that the collection of self-defined ethnicity data was possible but often problematic. Although negative reactions could be minimised by a clear explanation from the officer involved prior to the stop and search. Bland, Miller et al. recommend using the new coding as the basis for enhanced ethnic monitoring but that this be used in parallel with the existing officer-based classification system, so as to avoid missing data from those who refuse to define their ethnicity. Members of the public saw the benefit of getting written information on all stop and searches but still mentioned the attitude of officers and manner in which they were treated as being crucial to their perception of stop and search. On balance, Bland, Miller et al. concluded that the recommendations made in the Macpherson Report were not on their own, likely to produce sufficiently positive outcomes in relation to fairness and public confidence in stop and search (Bland, Miller et al. 2000).

The third research report, by Stone and Pettigrew (2000), explores the views of the public on stop and search. This report drew on interviews with people that had been stopped and searched during the pilot and discussion groups with different ethnic groups. Respondents from all ethnic groups described the experience of being stopped and searched similarly. A stop and search, no matter how cursory, is felt to be intrusive, embarrassing and potentially frightening. Those who were regularly stopped felt victimised by the police. This was especially true of black and Asian respondents who felt they were stopped more than white people and that they were being targeted due solely to their ethnicity. Stone and Pettigrew found general support and acknowledgement of the value of stop and search. However, '[t]here was a very strong perception that the way in which stops and searches are currently handled causes more distrust, antagonism, and resentment than any of the positive effects it

can have' (2000: 29). Respondents welcomed the introduction of the pilot forms and believed that having information in writing about the stop would increase accountability, although respondents indicated the importance of respectful attitudes of individual officers and the provision of a valid reason for a stop and search in conjunction with the recording of stops.

The fourth research report, by Quinton, Bland et al. (2000) 'Police stops, decision-making and practice,' explores themes raised in earlier studies by Dixon et al. (1989), Bottomley et al (1991) and Brown (1997). It asks how officers make the decision to stop and search and identifies a range of factors that inform officers' suspicion, including the working rules or assumptions that may underpin police practice. A qualitative approach was adopted consisting of interviews with a sample of 90 operational officers. Fourteen years after the introduction of PACE and the supporting Codes officers were still unable to provide a concrete definition of reasonable suspicion. In interviews, it was clear that officers understood reasonable suspicion not as an abstract legal concept but in terms of a set of individual factors, criteria or examples. However, understanding and criteria differed greatly between officers. With no formal guidance on what are sufficient levels of suspicion, the onus falls on the working rules of police officers to provide some basis by which to judge suspiciousness. Officers' suspicions are aroused by age, appearance (particularly clothing, such as baseball caps and hooded tops), older cars (which are more likely to have vehicle defects), makes of cars which are commonly stolen, expensive cars (particularly when driven by ethnic minorities who they assume would not be able to afford to buy them legitimately), behaviour (such as 'checking out cars' or avoiding eye contact), the time and place of the encounter (looking 'out of place' in a particular area at a particular time) and information and intelligence (as provided by witness statements or

crime reports) (2000: 19 – 42). The result is great variation between officers in their decisions to carry out stop and searches, which raises questions about the rule of law and equal application. Quinton, Bland et al. also concluded that it is clear that the threshold of reasonable suspicion for stop and searches is not being met in a number of cases and that grounds are often being developed after an encounter has been initiated. This is reflected in inadequate grounds being listed on search records. Some of the officers interviewed complained about the quantity and quality of intelligence that they were given in their daily shift briefings. In the absence of more formal intelligence, it is likely that officers fall back on police networks and personal experience. This often meant that stop and searches then became focused on those who had previous contact with the police or on the basis of generalisations or broad understandings officers have about people, places or situations that are likely to be associated with offending.

Quinton, Bland et al. draw particular attention to the threat to legitimacy posed by searches conducted under s60 Criminal Justice and Public Order Act. As previously noted, the s60 power allows searches in a specified area for a set period of time on the authority of a senior officer in order to prevent serious violent incidents. Quinton, Bland et al. found that because there are no well-defined standards of suspicion, which applies to s60 searches, these searches may take place for reasons, which are unclear to the individual searched and thus impact on public confidence. They also note that because s60 take place in the absence of well-defined grounds of suspicion they are less effective, in terms of producing arrests. Some of the officers interviewed expressed concern about the way s60 searches 'could be used by colleagues, commenting that speculative searches could be used inappropriately and without reason' (2000: 50). This was borne out in the s60 operation observed by the researchers, where the incidents upon which searches were based were

wide-ranging and inclusive and the researchers saw no evidence to suggest that the people searched in any of the observed examples were in possession of a knife or offensive weapon. Quinton, Bland et al. recommend further clarification of the concept of reasonable suspicion, in particular considering the role of generalisations in practice and guidance on how grounds of suspicion should be built.

The fifth research report is entitled ‘Profiling populations available for stops and searches’ by MVA and Miller (2000). This study builds on the proposition that stop and search patterns are the result of black people being more likely to be ‘available’ on the streets at the times that the majority of stop and search takes place (FitzGerald and Sibbitt 1997; FitzGerald 1999). It adopts a radically new methodology. Stop and search statistics are most often compared against the resident population figures. While resident population figures provide a reasonable estimate of the different ethnic groups’ experience of stop and search their appropriateness as a benchmark for determining disproportionality has been questioned. Resident population estimates may not be accurate. If the size of minority communities is overestimated the extent of disproportionality will be exaggerated. Furthermore, the resident population may not reflect the profile of people who are present in public places at the times and places where the police conduct stop and search. Rather than rely on resident population figures, this study attempted to measure the ‘population available to be stopped and searched’ – those out on the streets and compare these figures against stop and search use. Using five study areas – Greenwich, Hounslow, Ipswich, Chapeltown and Central Leicester – the study identified zones of high stop and search use and then attempted to profile the numbers and characteristics of people in those zones. A number of vehicles were equipped with discreet video cameras to allow an unrestricted view of pedestrians and vehicles on both side of the road. For each area within the sites,

two sets of three 18-hour shifts were devised and drivers were required to follow a specified route at specific times. In total over 20,000 pedestrians and nearly 50,000 drivers were filmed and data on their age, gender and ethnic appearance was subsequently extracted from the footage.

The research found that residential population figures failed to represent populations actually available to be stopped and searched. Many of those available to be stopped and searched were not local residents. Most significantly, in areas of high stop and search activity, young men and people from ethnic minority backgrounds tend to be over-represented in the available population. In relation to the numbers of stop and searches conducted 'the most consistent finding across sites is that (with some exceptions) white people tend to be both stopped and searched at a higher rate than would be expected from their numbers in the available population' (2000: 53). By contrast, Asian people were found to be under-represented in those stopped and searched compared to their numbers in the available population. However, central Leicester was an exception, with Asians over-represented in vehicle stop and searches. The picture for black people is mixed. In Greenwich, Chapeltown and central Leicester, they are under-represented amongst those stopped and searched. However, in Hounslow and Ipswich, they are stopped and searched in vehicles in greater numbers than and stopped and searched on foot at roughly similar numbers to their available population (2000: 53). Although MVA and Miller do not completely rule out discrimination, they conclude that since disproportionality in stop and search is to some extent the product of social factors beyond the control of the police they lack the power to eliminate that disproportionality by changing their practices. 'So, despite the best efforts of police forces, those from minority ethnic backgrounds may continue to be stopped and searched more often than white people' (2000: 87).

The authors go on to explore whether varying levels of stop and search use between places are justified by the different levels of crime in these places. GIS software was used to map crime records for central Leicester and Chapeltown, at police beat level and compared with the pilot records of stop and searches. Overall, they found that the results suggest there is a fair degree of consistency between the patterns of crime and the patterns of both stops and searches. For both the town centre in central Leicester and the ‘bottom end’ of Chapeltown stop and search patterns match crime patterns less than areas further away. They suggest that the levels of stop and search activity in some areas may thus not be justified due to the relatively low levels of crime in those beats. Analysis with both residential and available population profiles show that in areas where they have disproportionate levels of stop and search, compared to crime levels, these areas also have disproportionately high numbers of ethnic minorities. This was in contrast to areas where stop and search activity was lower than crime levels might predict which had small proportions of people from ethnic minority groups. MVA and Miller conclude that in places where there are disparities between crime and stop and search levels, these are likely to increase disproportionality in stop and search.

The findings of this report have been controversial, since they challenge the conclusions of both quantitative and qualitative studies that have consistently found that ethnic minorities are disproportionately stopped and searched. There are a number of methodological problems with this research, which weaken its findings. The methodology is tautologous – ‘available populations’ are the product of police policy and practices, which are themselves the focus of the study. Police statistics are used to determine areas of high stop and search use. These ‘hot spots’ are the result of police operational decision-making that may themselves reflect stereotypical labelling processes that establish a self-perpetuating cycle

whereby high crime rates both justified by and are the result of greater police activity in those areas. Bridges' (2001: 67) analogy is potent here:

Indeed, the argument presented by the researchers is akin to claiming that slavery was not a racist institution, since its disproportional impact on black people was merely a product of the racial make-up of the population available to be captured and enslaved in West Africa at the relevant time in history!

The available population is not a given population. The authors themselves note the often transient nature of the available populations measured, so there is no way to know that what was recorded is reflective of the population of the local area, or how much it is being affected by the social phenomenon which is being investigated – the power to stop and search. People may decide not to go onto the streets at particular times because they do not want to be stopped and searched (Statewatch 2000). Availability is not a neutral criterion but is shaped by structural factors such as higher levels of employment, exclusion from school, and different uses of social space, all of which are associated with ethnicity. Although many of these factors may be beyond the control of the police, the apparently neutral criterion of 'availability' is biased against some ethnic groups. The authors of the study seek to counter such criticism by demonstrating that stop and search activity reflects recorded crime patterns. We have already noted the exceptions to this correlation, which are likely to increase disproportionality in those areas. This is also to ignore the fact, however, that recorded crime reflects only a minority of actual crime and may 'itself be a product of police practices such as stop and search and of the operational assumptions which lie behind their differential application within an area and across the population' (Bridges 2001: 67). The huge expense of this methodology means that it cannot be used to produce annual statistics or verify findings on a larger scale.

The final Home Office research report, 'Managing the use and impact of searches: A review of force interventions' by Bland, Miller et al. (2000), evaluates approaches to management of stop and search. This study explores the interventions employed in six forces to manage stop and search. They focus on managerial and operational effectiveness, public awareness and partnerships. Managerial effectiveness refers to the problems of supervising stop and search despite its low visibility and monitoring stop and search data to get an accurate picture of what happens in practice. Bland, Miller et al. recommend that forces need effective daily scrutiny of forms, not only to check that they have been completed but that the grounds of suspicion listed conform with the PACE Code. Where search records are incomplete supervisors need to take immediate remedial action. They cite an initiative by the Northamptonshire Police who focused on improving officer recording practices through supervision. A rigorous quality control framework was developed to ensure that forms were being scrutinised to an appropriate standard (2000: 14). Operational effectiveness refers to maximizing the impact stop and search has on crime, while ensuring that it is conducted within the law and without a negative effect on the community. Bland, Miller et al. found that in general forces have sought to do this by linking individual searches with intelligence-led policing and in some cases linking crime pattern analysis with community intelligence. Interventions have also attempted to improve effectiveness in the practice of stop and search at officer level. In the Leicestershire Constabulary, for example, they used statistical data from search records to identify which officers were using the power most effectively (in terms of arrests) and held focus groups for these officers to share their good practice with other officers (2000: 25). Finally, Bland, Miller et al. looked at initiatives for raising public awareness and increasing community involvement in the management of searches, either at ground level through community liaison officers or strategic level on steering groups. An Initiative within the

Avon and Somerset police focused on distributing leaflets informing people about stop and search powers and their rights and employing a member of the public to work along side the police in the St. Paul's district, which provides a means for raising public concerns and scrutinising police practice (2000: 51).

Eight years after Macpherson

The year 2003 marked the tenth anniversary of the murder of Stephen Lawrence and the fifth anniversary of the publication of the Macpherson Report. These milestones again ignited debate and discussion on the success of initiatives and policies introduced post the Macpherson Report and the relationship between the police and ethnic minority communities. In October 2003 a BBC documentary, 'The Secret Policeman,' exposed extreme racist attitudes expressed by a number of police recruits undergoing basic training. The programme contained secretly filmed footage of a recruit donning a Ku Klux Klan style hood and boasting that he would like to kill Asians if he could get away with it. Another trainee officer boasted that he would issue ethnic minorities with fixed penalty notices while letting white people go with an informal caution (BBC 2003). The programme led to public outcry and condemnation of the officers' views by the police establishment. Rowe (2004) notes that the widespread attention following the broadcast focused on the abhorrent behaviour of the recruits but failed to analyse the instances of institutional racism in the documentary. The programme showed recruits early in their training being warned that racist language was not acceptable and that its use could lead to disciplinary proceedings. Yet, later in the programme a representative from the Police Federation advised that officers facing such discipline would be defended. Thus questions about racism in organisational features of the police service were ignored. 'The Secret Policeman' was followed by reports in the media of other examples of racism experienced

by ethnic minority police officers, such as the case of Supt. Ali Dizaei. Dizaei was suspended from his position in the Metropolitan Police Service due to corruption charges; after the case was dropped it emerged that he had been the victim of a 'racist witch-hunt' (Rowe 2004). Frustration over the continuing evidence of racism in the Police Service, led in October 2003 to the National Black Police Association discouraging minority recruits from joining the Metropolitan Police Service (Muir 2003). An interim report by the Commission For Racial Equality accused a number of police forces of 'stealth racism' through their failure to ensure that their employment practices comply with current race relations legislation (Commission For Racial Equality 2004).

In 2005, a large national survey of police officers reported its assessment of the impact of the Macpherson Inquiry on the police in England and Wales (Foster, Newburn et al. 2005). The research was based on initial qualitative research in four sites (two in London and two in small/medium county forces), three national surveys including 1,267 face-to-face interviews with officers, a postal survey of 98 ACPO officers and 133 Police Authority members and a period of in-depth qualitative fieldwork, including a detailed examination of operational practices, a case study of a murder investigation and research with minority ethnic communities exploring their experiences of policing. The Macpherson Inquiry appears to have been an important lever for change in the police service. The researchers found significant improvements in the recording, monitoring and responses to hate crime, the organisation and management of murder investigations, liaison with families of murder victims, consultation with local communities and the general excision of racist language from the police service. However these positive developments were not universal. Forces have tended to focus on those changes that were obviously identifiable and achievable. Although the majority of officers perceive the Macpherson Inquiry as an important catalyst

for change; there was a considerable amount of anger. Officers expressed the perception that the Inquiry was unfair; officers felt unsupported by their managers and suggested that they had been made scapegoats. The Inquiry appears to have had less resonance outside London; '[o]fficers in forces outside London distanced themselves from the inquiry by contrasting the MPS's incompetence with their own forces' perceived professionalism' (2005: 19). Much of the anger officers felt about the Inquiry stems from the label of 'institutional racism,' which officers regarded as the single most powerful message from the Inquiry. There remains widespread confusion over what the term means, with the majority of officers conflating ideas of institutional and individual racism. Many officers thought institutional racism in practice meant widespread individual racism in the police service. The seeming acceptance of the term by senior officers was viewed by staff in some forces as a betrayal. On balance, senior officers reflected that the notion of institutional racism was an unhelpful one in attempting to implement the Inquiry's recommendations.

Foster, Newburn et al. found that officers felt that their forces had improved markedly and were performing well in almost all areas, with the exception of stop and search. One of the most significant impacts of the Inquiry was that officers felt under greater and more intense scrutiny. Officers reported heightened sensitivity and anxiety in dealing with BME communities; this stemmed from the increased awareness about how their actions might be perceived. The greatest anxiety existed in relation to the use of stop and search powers and this contributed strongly to the negative views of the Inquiry. Officers noted that in the post-Macpherson climate officers were less confident in using their stop and search powers for fear of being accused of racism. The Inquiry appears to have focused attention on officers' uncertainty about the legitimate use of their powers:

It seems likely that because officers felt under increased scrutiny in the aftermath of the Inquiry, and that they might therefore be held to account for their actions, there

were times when they realised that they could not always account for their conduct. Officers reported that the perceived increase in scrutiny meant that they could no longer go on ‘fishing trips’ where they knew they did not have proper grounds for searching (2005: 30).

It therefore appears that before the Inquiry it was possible or even acceptable for officers to break the rules in relation to stop and search. For some officers, the need for certainty about their grounds of suspicion brought about a new confidence in the use of stop and search. The report highlights the divergent ways in which patterns of routine policing practice may be experienced, and how failure to take this into consideration could lead to a collective failure to provide an adequate service to a particular community. They use the example of the targeting of particular groups under ‘intelligence-led’ policing strategies, these may appear neutral but within the context of antagonistic police-community relations, such activities may be experienced as discriminatory:

For example, on Site 5 a large street robbery problem lead to explicit targeting of young African-Caribbean men through stop and search. Officers explained that this strategy was ‘intelligence-led’ and that targeting reflected the participation of young Black men in street robbery. However, while all officers understood that individual stop and search encounters could be perceived as racist, some seemed unaware of the cumulative impact of disproportionately targeting Black youths on the confidence of the local BME communities in the police. For example, a Sergeant in Site 5 explained that stop and search did not appear to cause tension in the Black communities because they were carried out with proper grounds, and few appeared to be “resented”. However, local Black youths recognised that they were being targeted and understood this as evidence of police racism. A young Black man explained: “They’ll go for the Black boys. Because they look suspicious. It’s because we’re dark skinned.” (2005: 65)

The authors note that this is precisely the territory within which many police-community problems occur and one which Macpherson sought to highlight with the use of the term ‘institutional racism.’ There still remains an overall failure to recognise the existence of differential perceptions of policing and the differential impact of policing practices, such as stop and search.

Frequency and patterns

In 2004/5 the numbers have risen by 15% on the previous year (Home Office 1006a: 10). Although the numbers did dip immediately after the publication of the Macpherson Report, they have continued to rise steadily. Rowe observes that the numbers of stop and search were actually declining prior to the publication of the Report. It would be wrong to suggest that the Report had no impact but there were clearly other factors at play, such as attempts to use stop and search as a targeted, focused tool in response to criminal activity rather than as part of routine policing (Rowe 2004). As the numbers of stop and searches have increased, when compared against resident population estimates, the levels of disproportionality has also increased. Black people were 6.2 times more likely to be stopped and searched than white people and Asian people were 1.8 times more likely to be stopped and searched (Home Office 2006b: 21). There remains wide variation between police forces both in the numbers of stop and search performed and the reason why such searches are made. Nationally, just over one half of all searches are for drug offences, although in many forces, Greater Manchester for example, the main reason given was stolen property. Few searches result in arrest with similar percentages both between ethnic groups and for different police areas; nationally 11% of searches led to arrest for both the black and white group in 2004/5 and 10% for Asian people (2006: 29). This report does not follow through to arrests to see how many of these stop and searches lead to conviction.

There has also been a considerable rise in the use of searches under section 60 of the Criminal Justice and Public Order Act 1994 and section 44 of the Terrorism Act 2000 (both powers that do not require the threshold of reasonable suspicion). In 2003/4, a total of 39,840 searches were carried out across 33 police areas; this increased to 41,302 in 2004/5 over 31 police areas (Home Office 2006b: 22). Under this power black people were 13.8

times more likely than white people to be searched whilst Asian people were 5.6 times more likely (2006: 22). Despite the rising numbers, the overall arrest rates are declining, only 3% of section 60 searches resulted in arrest in 2004/5 (2006: 22). There is little research into how the section 60 powers are being used; what types of violence incidents are prompting their authorisation, why they are used more extensively by some forces and while the powers are in place who do officers decide to stop and search.

Section 44(1) and (2) of the Terrorism Act 2000 allows officers, when given authorisation, to stop and search vehicles and pedestrians for articles that could be used for terrorism, whether reasonable suspicion is present or not. The use of these powers has increased. In 2004/5 32,086 searches were made under s 44(1) and (2) up 9% on the previous year (Home Office 2006b: 22). Of these searches 23,400 were conducted on white people, 2,511 on black people, 493 on Asian people and 1,481 on the 'other' category. Two fifths (40%) of these searches were within the Metropolitan police district and 20% within the city of London (2006: 22). The use of these powers has increased dramatically since the bombings in London in July 2005. The Home Office statistics do not cover the period after the bombings, yet a survey of 18 forces conducted for the BBC showed that in half of those forces they had stopped more people in the three months following the bombing than they did the previous year (Fraser 2005). The survey shows great variation between forces. In Hampshire, for example, there have been 4,438 stops and searches since July compared to 696 for 2003/4. Whereas in Kent there were just 56 stops and search in the three months after July despite the fact that this county is home to the Channel Tunnel and the channel ports (Fraser 2005). The numbers of Asian and black people stopped and search in London has increased twelvefold after the bombings. According to Metropolitan Police Service figures 2,405 Asian and black people were stopped while walking, compared with 296 last

year. Stops on vehicles under anti-terrorism powers rose by 86% for white drivers, by 108% for African-Caribbean drivers and 193% for Asian drivers (Dodd 2005). None of these searches have resulted in an arrest or charge related to terrorism. The figures do not include stops by the British Transport Police (who do not publish their stop and search figures). Commenting on these figures Peter Herbert, a member of the Metropolitan Police Authority, said ‘intelligence cannot lead to a 1,100% increase, this is just random stop and search. This means the police are not using their information properly, because they are too busy making random stops, which deters no one and which alienates large numbers of people and wastes time and resources’ (Dodd 2005).

The ways in which disproportionality has been assessed has led to several criticisms. The first, relates to the reliability of stop and search statistics. Home Office statistics are based on police records and it is clear that not all incidents are recorded (FitzGerald and Sibbitt 1997). It has been suggested that officers are more likely to record stop and searches which have involved individuals from ethnic minority communities than those involving white people because officers believe these encounters may be more confrontational and so they feel the need to ‘cover their backs.’ Thus a proportion of stop and search incidents involving white people go unrecorded thus overestimating the extent of disproportionality (Shiner 2006). There remains little evidence that recording rates from minority groups is higher than whites and it has been suggested that in reality they may be lower as police officers may seek to conceal discriminatory practices by not recording stops with minority groups (Bowling and Phillips 2002).

It is suggested that certain ethnic groups contain a greater proportion of offenders thus making them subject to higher rates of stop and search. The fact that arrest rates and

imprisonment rates show an over-representation of people from African and Caribbean origin has been taken by some as an indication of greater criminality among these populations (Smith 1997). This conclusion fails to observe that official statistics are the product of criminal justice practices. Studies based on self-reported offending point to comparable rates of offending among black and white people and lower rates for Asians (Bowling and Phillips 2003). It is likely that the type of offences that people commit may vary by ethnic group reflecting broader social factors. When stop and search use is broken down by type of offence it reveals some interesting anomalies. The vast majority of stop and searches are conducted for drugs, stolen goods and going equipped to commit an offence. There is increasing evidence based on victim descriptions that black people are overrepresented in robbery and theft from person offences. Although the reliability of such data can be questioned we would expect to find an over-representation of black people stopped and searched on suspicion of robbery and theft from person. This is not the case, in 2004/5 stolen property accounted for 30% of white stops, 24% of black stops and 18% of Asian stops (Home Office 2006b: 28). The picture for searches in relations to drug offences is strikingly different. Self-report surveys point to similar levels of drug use between black and white people and lower levels for Asians (Graham and Bowling 1995; Ramsay and Partridge 1999). Despite this, drugs searches account for a relatively large proportion of stop and searches on minority groups. In 2004/5 drugs accounted for 38% of white stop and searches, compared with 51% of black stop and searches and 55% of Asian stop and searches (2006: 28). A large proportion of drugs searches are proactive or 'high-discretion' searches initiated by the officer rather than 'low-discretion searches' based on intelligence or information from members of the public. As Quinton, Bland et al. (2000: 16 – 17) note 'where levels of discretion are highest, we might expect generalisations and negative stereotypes about likely offenders to play a role'. The majority of arrests high-

discretion drugs searches are for the possession of cannabis. There is increasing concern that young men from minority groups are being disproportionately criminalised under cannabis arrests and questions as to use of resources and local policing priorities (FitzGerald 1999; Waddington, Stenson et al. 2002).

Available population research

The report 'Disproportionality in police stop and search in Reading and Slough' (Waddington, Stenson et al. 2002) answers the call to replicate the 'available population' methodology developed by the Home Office in different policing areas (MVA and Miller 2000). Working with the Thames Valley Police, Waddington, Stenson et al. attempt to profile the population 'available' to be stopped in Reading and Slough. Using police statistics in Reading and Slough for the first six months of 2001, researchers determined racial and ethnic differences in rates of stop and search and identified geographical 'hot spots.' Researchers then enumerated the composition of the street populations in areas of stop and search activity, using categories of race (white, black, Asian, other), age (child, young, adult, old) and sex (male and female). Between February and July 2002, in both sites, researchers followed standard routes on a random series of occasions between 2pm and 2am. In areas where it was difficult to get vehicle access, such as the pedestrianised Reading town centre, samples of CCTV footage were taken. An additional exercise attempting to evaluate the visibility of identifying the occupants of vehicles observed 482 vehicles. To examine the decision making of officers undertaking stop and searches, interviews were conducted with 60 patrol officers in reading and Slough, asking them to recount their last three encounters (including an example of both a high and low discretion stop).

Waddington, Stenson et al. found a marked disparity between the profile of the residential population, using the 1991 census and the population observed on the street. Higher proportions of visible ethnic minorities were present on the streets in comparison to their proportion in the residential population; black and Asian people are marginally more available in Reading and are far more numerous in Slough. White people are much less evident amongst those available to be stopped and searched in both towns, especially Slough. Being young and being male are the greatest indicators of likelihood to be stopped and searched. Young people and men, and especially the combined category of young men are far more likely to be stopped than their proportions in the available population. Disproportionality in the numbers of people stopped and searched is greater in Slough than in Reading. Disproportionality in both towns tends to favour ethnic minorities and disfavour whites. In both towns, young white men are under represented in the numbers stopped and searched in relation to the residential population but over represented compared with their numbers on the streets (2002: 14). In Reading, young black and Asian men are over-represented in the numbers when compared to the residential population but evenly matched in relation to the street population (2002: 14). In Slough, they are over-represented in their numbers when compared to the residential population but under-represented when compared to the street population (2002: 15).

The interview data reveals that the use of stop and search appears to be less common for Thames Valley officers than for those in bigger forces such as the Metropolitan Police Service. Of the 164 incidents that officers described, in two-thirds of incidents there appeared to be clear grounds of suspicion prior to making the stops. In the bulk of cases this suspicion was aroused by subtle signs in the manner or behaviour of the person stopped and in the nature of the unfolding encounter. In contrast to previous research, the vast

majority of incidents described did not involve individuals who were known to the police officers. Around one-third of these stops and searches resulted in arrest, much higher than the national average of 10-12% (2002: 21). Waddington, Stenson et al. find no evidence that stop and search was being used as an order maintenance practice and no evidence that arrests arise from a spiral of conflict within the stop and search encounter. They warn that the descriptions of offenders given to officers prompting stops were often vague and could lead to unnecessary stops and recommend that officers take individual responsibility for making their own judgements about when to make a stop based on vague descriptions. The researchers found a number of stops, especially late at night when there is more scope for discretionary action, to be based on untested 'canteen wisdom,' individually acquired or locally shared knowledge about offenders and suspicious circumstances (2002: 28)

Waddington, Stenson et al. thus conclude that there is little evidence of disproportionality in stops in relation to race/ethnicity or of overt targeting of visible racial minorities as an outcome of officers' stereotyping. In a paper, extending the discussion, they explore the issue of visibility and how it may impact on stop and search decision-making and investigate whether disproportionality may occur indirectly from the ways in which police direct their efforts in terms of time, place and concentration on certain makes of vehicle (Waddington, Stenson et al. 2004). The interview data reveals that officers are overwhelmingly in vehicles rather than on foot when making stops. The researchers found that while in vehicles their ability to make ethnic and racial classifications while driving were variable depending on time of day, weather conditions and whether suspects are on foot or in a vehicle. Waddington, Stenson et al. suggest that visibility can be used as an independent criterion against which to assess officer selectivity. Implicit in the discussion of selection, is the assumption that member of ethnic minorities are readily identifiable.

However, reality is often much more ambiguous, allowing a degree of unknown error. During a one hour period in Reading, observers recorded 482 vehicles, but in only 5% of the vehicles could they identify any of the occupants (2004: 901). It is harder to see people in vehicles yet the majority of police stops are vehicle stops. As you would expect, the darker it gets the harder it is for officers to see people on the street, yet it is when light levels are at their worst that police stop and search activity reaches its peak. This is echoed in the seasons. Summertime is a season of longer daylight than winter and generally dryer and warmer conditions, resulting in pedestrians often wearing less and side windows in vehicles being opened. Yet the researchers found that the seasons had no impact on the level of stop and search use. They conclude that these obstacles to visibility are inconsistent with the 'racist targeting' hypothesis.

Hence, Waddington, Stenson et al. conclude that Macpherson's 'clear core conclusion' that disproportionality in stop and search was attributable to officers 'stereotyping' ethnic minorities is wrong. Instead the over-representation of black and Asian people in stop and search data is the result of the comparison with flawed residential population data. Visible ethnic minorities are proportionately no more likely to attract the suspicion of the police than members of the white population. Hence, a 'simpler and more prosaic explanation is that stop and search tends to reflect the racial composition of the 'available population' (2004: 911). Waddington, Stenson et al. posit that disproportionality may arise indirectly from how discretion is focused, for instance on particular locations. If the police focus on locations where ethnic minorities are concentrated, they will be disproportionately the subject of stop and search. They note that this approach is consistent with the concept of 'institutional racism,' which (as defined by Macpherson) places less emphasis upon individual prejudice and more on how racist outcomes may be the result of indirect and

possibly unintended consequences of action. It has already been noted that stop and search takes place in the evening and early hours of the morning, probably because this is when officers have less calls for service and are free to be more proactive. It is possible that employment, housing and educational patterns result in more ethnic minorities being present in public spaces at these times, hence making them available to be stopped. The authors call for further analysis of the concept of institutional racism and the complex interplay between (the perhaps unwitting) routine institutional practices and structural conditions within which stop and search operates.

A further attempt has been made to explore stop and search patterns through the development of an available population benchmark. Hallsworth and McGuire (2005) consider the extent to which stop powers are proportionately exercised and whether a stop can itself be considered evidence led policy within the City of London Police (CoLP). Researchers conducted analysis on a depersonalised database of stop and searches conducted between February 2003 and February 2004. From this examination, 8 locations in the City of London were identified as zones with the highest levels of stop and search use (4 related to vehicle stops and 4 to pedestrian). A survey of pedestrians and vehicles was then initiated in these areas over a two day period between 7pm and 3am. In addition, a researcher observed two night patrol shifts, interviewing officers during this exercise and interviews were conducted with officers engaged at various points during the recording process to examine how the database is constructed and information collected used. This street occupancy survey, confirms the findings from Reading and Slough; showing that the ethnic profile of street populations (including pedestrian and vehicle traffic) departs dramatically from the profile of the residential population. When compared against the ethnic profile of drivers of vehicles within the city, there was no evidence of

disproportionality in relation to the use of stop and search powers. These stops, constituted the overwhelming majority of stop activity within the city. They concur with Waddington, Stenson et al. that it is impossible to attribute ethnicity to occupants while a car is moving during the evening hours. As most of the stops conducted by the CoLP were of occupants of cars, they argue that CoLP officers do not engage in ethnic profiling on the basis that they cannot know who they are stopping. Although officers cannot know the ethnicity of a driver prior to stopping them whilst on active patrol, it is possible to determine ethnicity in urban settings when vehicles are forced to slow down as they approach traffic lights. It remains possible that disproportionate treatment may occur after the stop has been made. The statistical analysis of the police stop data affirmed, that black passengers appeared disproportionately more likely than their white counterparts to be searched (almost universally for minor drug offences involving marijuana use) (2005: 35). The picture for stop and searches of pedestrians is very different. When compared to the ethnic profile of people available on the street to be stopped there is some evidence of disproportionality of black people who represent 9% of the overall street population but 13% of those stopped (2005: 30). These figures are subject to local variation. At each of the four locations the proportion of stops involving black people was higher than their level in the local street population, sometimes by twice as much and at one location (Moorgate) nearly three times the relative population level (2005: 30-33). There was little evidence that information gained from previous stop and search exercise was used systematically to inform police practices or performance in relation to the use of stop and search. They conclude that as a police practice stop and search is an event more often led by events, not by prior agreed strategies (2005: 28).

As previously noted, the available population methodology has serious weaknesses. These two studies fall into the same tautological trap as the Home Office study. Both use police statistics to determine which ‘hot spots,’ areas of high stop and search activity, to include on the routes observers followed to determine the ethnic profile of the available population. These ‘hot spot’ areas are the result of police operational decision-making, rather than neutral locations, police decisions thus play an important role in constructing the available population. A thorough analysis would include a study of ‘cold spots,’ areas where stop and search is used but perhaps not to such a high degree. Evidence from the London Borough of Lambeth shows that disproportionality is higher in areas where stop and search is used less frequently (Lambeth Community-Police Consultation Group 2005). Quinton, Bland et al. (2000: 32) also found that one of the factors that aroused officers’ suspicion was incongruity, people looking ‘out of place,’ or ‘like they don’t belong’ in a particular area. It is likely that visible ethnic minorities are stopped disproportionately in certain neighbourhoods where they are perceived as being ‘out of place.’ This is certain to impact on experiences of being stopped and searched and yet is not reflected in the studies. Forces do not have the necessary resources to allocate to measure the ethnic profile of available populations on a regular basis, thus the available population does not provide a reliable basis for measuring change over time (Metropolitan Police Authority 2004). Both studies utilise ‘visibility’ as an independent criterion for assessing officer selectivity. This is to ignore other visual markers of ethnicity such as dress, movement, type of vehicles, and bumper/window stickers that are readily apparent in many local contexts. Although this methodology is problematic, this research expands the discussion in two analytically separate dimensions of police decision-making – the spatial deployment of stop and search use and how discretion is exercised within areas. These studies begin to speak to how discretion is exercised, but are still unable to tell us if officers are stopping the right people.

Being available does not in itself constitute sufficient grounds for a stop and search and those who provide legitimate objects of suspicion may not be evenly distributed throughout the available population (Shiner 2006). They also tell us little about how discretion is utilised after a stop has been made and the *manner* in which it is exercised, which is one of the factors that those subject to stop and search most strongly object to (1990 Trust 2004; Havis and Best 2004). Yet these studies raise some important issues about how policing intersects with other institutional and socio-economic biases and differences. Available populations are racialised. Future studies need to explore how complex local processes feed into and from police deployment of stop and search and its impact on different ethnic groups.

Further attempts at regulating stop and search

The significance of recent claims about available populations remains a matter of debate. Macpherson (1999) warned that complex arguments used to justify disproportionate stop and search figures are not believed by many in minority communities and serve only to aggravate the existing mistrust. This was supported by the National Black Police Association, who described the notion of available street population as a ‘smokescreen’ (submission to Metropolitan Police Authority 2004). It is my concern that the available population methodology may simply serve to legitimate disproportionate and potentially unfair use of police stop and search powers. It is from this standpoint that the Home Office has carried out research focusing on improving the practice and regulation of stop and search.

There have been a series of studies that explored Macpherson’s recommendation 61 that all stops as well as searches be recorded by the police (Quinton and Olagundoye 2004; Shiner

2006). Quinton and Olagundoye's report, 'An evaluation of the phased implementation of the recording of police stops' (2004) assesses the implementation of this recommendation. The definition of a stop (as outlined in the March 2002 draft Code) is '[w]hen an officer requests a person in a public place to account for themselves, i.e. their actions, behaviour, presence in an area or possession of anything, a record of the encounter must be completed at the time and a copy given to the person who has been questioned' (2004: 3).

Researchers visited the six implementation sites, spending six shifts observing in each and interviewing 108 officers in total. The authors found that although officers were able to articulate under what circumstances they were supposed to record an encounter, the definition of a stop was not universally understood. The observations revealed that there was considerable evidence of under-recording, only 45% of observed stops were recorded (2004: 13). It is the act of asking someone to account for their actions that triggers the need to complete a record. But in many cases members of the public will account for their actions even though the officer has not asked the question because the nature of the interaction with police officers makes them feel obligated to do so. These instances can also be intrusive and frightening, it needs to be recognised that holding people to account can involve direct questioning, the positioning of officers, when officers invite a response by describing a situation or asking open questions and through processing, such as conducting a PNC check or checking identity. The authors conclude that the requirement to record stops do not grant police extra powers or limit their ability to interact with the public; it is more a question of documenting existing police practices. The research shows that there were vastly different reasons for conducting stops between the five sites. The vast majority of stops led to no further action being taken; the proportion resulting in arrest was less than 5 percent (2004: 25). Disproportionality was generally lower for stops than searches, although the reason for this is not clear. Despite its smaller scale, people from

ethnic minorities groups were in most cases disproportionately stopped, when compared against resident population benchmarks (2004: 26).

Complementing this report, MORI (2004) conducted a study of the views of the public on the implementation of recording police stops in the five research sites. Awareness of the requirement to record all stops varied greatly between the sites, depending on the levels of publicity around the initiative. Researchers found that there was widespread support for the recording of stops amongst respondents. The main advantage perceived was that the record provided a detailed reason for the stop and that it enabled people to prove they had been stopped (e.g. for complaints). Most respondents supported the use of stop and search in principle, particularly when dealing with serious crime. However most were likely to cite the problems associated with the use of the powers and argued that officers should change the way they decide who to stop and search and the manner in which they do so. Overall, the report concludes that although the initiative was welcomed, its impact on confidence was limited. Although expanding the recording requirement gives supervisors greater tools for scrutinising their officers' use of stop and search, it may be that recording all encounters has a negative impact on the relationship with the community they serve by formalising contacts. Rowe argues (2004: 93) '[i]t may be counterproductive to formalise and codify in this what would otherwise be routine interchanges between the police and members of the public, since the requirement to complete records might deter officers from engaging with members of the public.' The recording of stops is of secondary importance to the attitudes and behaviour of officers. This is supported by Havis and Best (2004) in their review of stop and search complaints forwarded to the Police Complaints Authority. Reviewing the first 100 complaints received by the Police Complaints Authority between

April 2000 and March 2001 that 63 percent were regarding the conduct of the officer (2004: 34). Many complaints reported officers as being oppressive or uncivil.

Shiner (2006) also explores the impact of requirement to record stops. The study based on a survey of 41 police forces and case studies in four forces evaluated the impact of the guidance on recording of stops and collate emerging good practice. Shiner found that the requirement to record stops was considered within some forces as part of an externally imposed agenda. As a result a distinctly critical discourse has developed in response to this agenda which is perhaps best seen as an attempt to protect the police against what is considered an attack on its integrity. Although there was widespread support for increasing accountability providing that it does not mean increased bureaucracy. The implementation of the recording of stops provides an opportunity to re-evaluate mechanisms for internal accountability. Supervision was identified as crucial; it was stressed that supervisors should scrutinise (not simply sign off) stop forms and should take remedial action when a problem was identified. Many forces had offered supervisors additional training to be able to do this. It was also emphasised that there should be officers within a force who are responsible for monitoring and addressing stop and search and identifying officers or teams who are stopping unusually high numbers of people from minority groups. Although performance management techniques appeared to be fairly widespread, they were considered controversial. Those involved in implementation were keen to emphasise that disproportionality may be justified and should not be equated with discrimination or individual racism. Apparent incidents of disproportionality, it was suggested, may simply reflect the population profile of a particular area or the type of operation they have been involved in. In an attempt to take account of these issues, the importance of assessing stop records against other indicators such as arrest rates and complaints was emphasised. In the

London Borough of Lambeth, for example, the assessment of stops is linked to arrest rates on the basis that a consistently high level of disproportionality was a particular cause for concern when accompanied by a consistently low arrest rate (2005: 35).

Shiner (2006: 62) argues that ‘internal police safeguards are a necessary but insufficient basis for effective regulation.’ Not only should external regulation take the form of HMIC and Police Standard Unit inspections but should also involve locally based independent scrutiny, which should go beyond the standard forms of accountability based on statistical indicators and include some form of qualitative monitoring to capture the manner in which stop and searches are performed. There needs to be central guidance on the development of locally based monitoring groups or scrutiny panels, which would include how statistical indicators should be interpreted, what responses should be made to disproportionality, the role of capacity building and strategic representation across local groups. There are some interesting practices being developed in this area. In West Yorkshire, for example, the police are developing an approach to community engagement based on the scrutiny of individual stops through ‘qualitative’ monitoring. Scrutiny panels, in each basic command area, will meet monthly and scrutinise a minimum of ten randomly selected stop forms, half of which will involve people from minority groups. The officers involved in the stops will be asked to provide copies of their pocket book entries and if necessary, a report outlining the circumstances of the report. It is intended that this process will make officers more aware of their actions and supervisors more aware of their responsibilities; that it will demonstrate to panel members – and hopefully members of the wider community – openness in dealing with such matters; that it will help to explain the processes which officers undertake when carrying out stops and that it will contribute towards increased public confidence (2006: 41).

In July 2004, the Stop and Search Action Team (SSAT) was set by the Home Office to ensure that the police use their stop and search powers fairly and effectively and to put measures in place to reduce disproportionality and increase ethnic minorities' confidence in police use of their powers. SSAT produced the 'Stop and Search Manual' (2005), which based on existing research and observations in four forces and one metropolitan borough seeks to provide a practical guide on use of stop and search powers. The SSAT spent a short period in one basic command area in each force taking a snap-shot of activity, systems and processes and assessing how these may have affected police practice. The research showed that the arguments for using street availability to explain disproportionality were not pertinent to all forces and cannot explain sudden rises in disproportionality that are experienced by some forces. The authors argue that given the daily fluctuations in 'street populations,' no cost-effective method for establishing reliable figures has been developed and continued justifications based on 'available population' has had a detrimental effect on community confidence. Force managers and practitioners were critical of PACE guidelines for failing to provide a national definition of reasonable suspicion. Police managers and officers viewed certain government policy, priorities and initiatives, such as the Street Crime Initiative, as being directly responsible for driving up disproportionality. Although many force policies provided definitions and guidance on stop and search use; these varied significantly in content and quality. 'In forces with lower levels of disproportionality the chief constable and senior managers agreed as to the purpose of stop and search. Where there was also agreement with the local community, confidence in the use of the power was significantly higher. Policies in these forces stated explicitly that an officer's performance would not be assessed on the number of stop and

searches they performed, but that they would be judged on the outcomes and quality of stop and searches' (2005: 38).

The research shows large variations between forces on the type of offence that stop and search is being targeted towards. They find that while some forces use the power largely to target drugs others found it ineffective for that offence. The authors found that in some forces stop and search was being used as a public reassurance tool and to prevent people who were perceived as being a nuisance from gathering in certain places, although there was no reasonable suspicion of a crime. Arrest rates were also seen to vary greatly. The arrest rates appear to be fairly high for minor drug possession but much less successful as a tactic against drug dealers. Many officers cited a lack of confidence in using their stop and search powers, particularly among probationers. Officers described a vicious cycle whereby lack of confidence from an officer could lead to inappropriate use, which in turn, decreases confidence from the community. Sergeants are crucial to success in stop and search but supervision is highly variable. In some forces officers felt their line managers were uninterested in stop and search and seemed ignorant of their statutory responsibilities. In contrast, sergeants in other forces took a keen interest in the activity and regularly checked the records of officers for evidence of disproportionality. In general, local communities reacted positively when the power is used for their benefit but young people felt that the power was used by the police officers to assert their authority and to control behaviour rather than prevent crime. It is not the number of searches that causes the greatest friction but rather the way in which searches were conducted and the perceived targeting of specific racial groups. The manual provides a stop and search template, intended to help forces identify disproportionality and take the appropriate remedial actions.

Conclusion

This chapter has reviewed the development of stop and search powers and their regulation under PACE. Numerous research studies have shown that these powers are being disproportionately used against minority communities. There remains disagreement about the cause of this disproportionality. Debates have focused on the one hand on claims of police discrimination; and on the other hand, claims of differential rates of offending and demographic and cultural differences amongst ethnic groups have been used to explain and justify disproportionality in police stop and search use. In light of continuing disparities there have been attempts to strengthen the administrative controls by providing practical definitions of reasonable suspicion and improving management and information systems to monitor officers' behaviour. In the next chapter, we explore the development of stop and search powers in the US, where police stop and search powers are defined by the law and regulated by the courts. The focus is on legal control rather than administrative control. As we will see, despite the different socio-political context and system of legal controls there is still a problem of disproportionate stops of minority groups.

STOP AND SEARCH IN THE US

4

The stopping of black drivers, just to see what officers can find, has become so common in some places that this practice has its own name: African-Americans sometimes say they have been stopped for the offence of ‘driving while black’... it is the standard way of describing the common experience of constant stops and harassment by the police... Profiling is not the work of a few ‘bad apples’ but a widespread, everyday phenomenon that will require systematic reform.
(Harris 1997: 546)

The practice of stopping pedestrians on the street and either questioning them or frisking them or both; has long been a source of police-community tension in America. A frisk is a cursory search, which is limited by the Supreme Court to ‘a pat down’ of a suspects’ outer clothing for the purpose of finding a weapon. Stopping and questioning a person on the street is often referred to as a field interview or interrogation. Field interviews or stop and frisks are some of the most common encounters that police officers have with members of the public, particularly in an urban context. Boydston (1975: 7) argues that the purpose of a field interview is to ‘emphasize to potential offenders that the police are aware of them’ and to ‘demonstrate to the general public in a highly visible way that they are actively fighting crime and protecting law-abiding citizens.’ Frisks serve the same purpose and are often explained in terms of officer safety through ensuring the suspect is not carrying a weapon (*Terry v. Ohio*: 392 U.S.1 (1968)). There are two other forms of initial police contact that often stem from a stop and frisk or field interview and are an equal source of community tensions – consent searches and pretext stops. Consent searches can take place in numerous contexts – pedestrians on the street, drivers in their vehicles, passengers on trains and buses. Officers can ask a person if they consent to have their person or property

searched; they have the right to refuse but officers are not required to tell them this. A pretext stop is conducted after an officer observes a traffic violation and conducts a stop not on the basis of that violation but in order to investigate other crimes, particularly drug offences.

A growing body of anecdotal and empirical evidence reveals that African-Americans and Latino/as are disproportionately targeted by these practices (Cole 1999; Harris 2002). The term ‘racial profiling’ embodies this widespread belief that minorities are being targeted for police scrutiny - equating race with criminality – rather than on the basis of individualised suspicion (Buerger and Farrell 2002). The debate over racial profiling occurs in a number of contexts. The paradigmatic context, the setting where the term was coined, is drug interdiction on the highway growing out of the War on Drugs.⁴ Similar concerns are also expressed during wider debates on the best way to tackle crime – simplistically represented by Zero Tolerance policing verses a community-orientated approach. Aggressive use of high-discretion police stops has formed the backbone of Zero Tolerance policing that was developed in New York City during the 1990s (Karmen 2004). Proclaimed as a success, the Zero Tolerance philosophy has been adopted in many cities across America; while a number of forces in the UK have adopted limited Zero Tolerance programmes in targeted areas (Innes 1999). The New York City experience has shown that Zero Tolerance programmes are likely to be focused on so called ‘high-crime’ areas which are likely to be mainly minority neighbourhoods hence virtually all the people aggressively stopped and searched will be ethnic minorities. A more recent phenomenon to appear is religious

⁴ In the mid-1980s President Reagan launched a ‘war on drugs.’ In 1986 Congress passed the Anti-Drug Abuse Act; this law imposed the federal death penalty for anyone guilty of participating in drug-related felony, which intentionally or unintentionally kills another person, introduced mandatory sentencing for possession and sale of drugs and provided funds for federal agencies to enforce the law. This ‘war’ has never been ‘won’ and subsequent presidents have continued to trade on the ‘tough on drugs’ rhetoric and increase the funding to federal agencies and local police to focus on drug enforcement (Tonry 1995; Mauer 1999, Chambliss 1999).

profiling under the rubric of the 'War on Terror.' Evidence is starting to emerge that Muslims and those of perceived Arab appearance are being singled out for stops and searches on the basis of religion and ethnic appearance rather than individual suspicion of involvement in terrorism (Fiala 2003; Amnesty International 2004; Leadership Conference on Civil Rights Education Fund 2004). Profiling has a range of social costs from increasing friction between minority communities and the police to overall decreased confidence and cooperation with the police (Tyler and Wakslak 2004).

Racial profiling

The controversy surrounding 'racial profiling' in the 1990s gave an old practice a new name. The 1967 President's Commission on Law Enforcement found that stop and frisk was not being used even-handedly and was 'a major source of friction between the police and minority groups' (President's Commission on Law Enforcement and Administration of Justice 1967: 183 - 4). In the years following the President's Commission, personal anecdotes and accounts have illustrated the experiences of many individuals from minority groups who have been stopped and searched on the street or in their vehicles in numbers far greater than their proportion in the population. The practice has even been given its own nickname: African-Americans and Latino/as sometimes say that they get stopped for the offence of 'DWB' – 'driving while black or brown,' a twist on the crime of driving while intoxicated. By December 1999, a Gallup poll found that 59 % of adults polled believed that the police were engaging in racial profiling and 81% said they disapproved of the practice (Gallup Jr. 1999: 238 - 40). The poll also asked respondents if they had been stopped by the police and if they believed the stop was based on their race alone, 6 % of whites and 47% of blacks of all ages responded that they had been stopped by the police because of their race. 72% of black men between the ages of 18 and 34 believed that they

have been stopped solely due to their race (1999: 238 - 40). So widespread was the acceptance and condemnation of racial profiling in stops that President Bush has condemned it: '[i]t's wrong, and we will end it in America. In doing so, we will not hinder the work of our nation's brave police officers. They protect us every day – often at great risk. But by stopping the abuses of a few, we will add to the public confidence our police officers earn and deserve' (U.S. Department of Justice 2003: 1).

The current understanding of the term 'racial profiling' developed out of the 'drug courier profile' that was created by the Drug Enforcement Agency (DEA) during the mid-1980s as part of 'Operation Pipeline,' the Agency's effort to combat interstate drug trafficking on roads known as drug 'pipelines' (Buerger and Farrell 2002). The DEA trained local law enforcement officials to look out for 'indicators' – behavioural clues of drug trafficking such as nervousness, rented cars, indications that drugs might be concealed in the vehicle. Although the DEA deny that race formed part of these profiles, training materials pictured predominantly minority faces and told officers to look for, among other characteristics, 'people wearing dreadlocks,' cars with two or more Latino males, Columbian males aged twenty-five to thirty years, black males aged twenty to fifty years, white males aged twenty to thirty, blacks and Columbians wearing 'lots of gold' (Cole 1999: 49). The DEA's drug courier profile was promoted as an effective technique for identifying individuals or vehicles for scrutiny and promoting the use of stops on the pretext of traffic violations. Over a decade the 'Operation Pipeline' programme trained twenty-seven thousand law enforcement officers in forty-eight states (Duster 2004: 3). Harris argues that racial profiling was institutionalised in law enforcement from the mid-1980s onwards through this DEA training programme (Harris 2002).

Racial profiling is usually understood as the practice of targeting or stopping a pedestrian or motor vehicle based primarily on the person's perceived race rather than any individualised suspicion that the person has been involved in criminal activity. The term itself is relatively new and there is no consensus on its meaning or what it entails, often leading to confusion and disagreement in how to identify and measure it. Specific definitions of racial profiling vary along a continuum ranging from the use of race alone as the reason for the stop to those using race along with several other factors as the reason for the stop (Farrell, McDevitt et al. 2002). Using a narrow definition, racial profiling occurs when a police officers stops, questions, arrests and/or searches someone *solely* on the basis of a person's race or ethnicity. Critics have typically used this definition when condemning racial profiling, as have many law enforcement agencies when denying the existence of profiling. A broader definition of racial profiling acknowledges that race may be used as one of several factors in an officer's decision to stop someone. For example, the definition offered by Ramirez, McDevitt and Farrell (2000: 3), which defines racial profiling as

any police-initiated action that relies on the race, ethnicity, or national origin rather than the behaviour of an individual or information that leads the police to a particular individual who has been identified as being, or having been, engaged in criminal activity.

Very few individuals base any serious decision *solely* on one factor. A stop is likely to be made on the confluence of several factors such as race or ethnicity along with age, dress (hooded sweatshirts, baggy trousers, perceived gang dress etc.), time of the day, geography (looking 'out of place' in a neighbourhood or being in a designated 'high-crime area'). This definition reflects the fact that racial profiling may be caused by the purposefully racist behaviour of individual officers but might also be the result of institutional factors (Buerger and Farrell 2002).

Although the term emerged out of the drug interdiction efforts on the highways, it has come to represent a wide range of present and historical contacts between minority communities and the police. It has been generalised to apply to other stops or contacts by any type of local, state or federal law enforcement officer or other authority such as traffic stops in cities as well as highways, stopping and questioning of pedestrians in public places in urban areas, sweeps of trains and buses, immigration status checks by IND officials, and airport checks or searches. Shuford (199: 371 -2) argues that the phenomenon is so pervasive that a more accurate description is ‘‘breathing while black,’ a reality underscored by the shooting deaths over a thirteen-month period by the New York Police Department of four unarmed black men’. This also reflects the fact that it is not only the initial stopping and targeting of individuals that is a problem but also discriminatory treatment after a stop has taken place, such as black motorists being given traffic citations while white motorists are let off with a warning or Latino/a youth, but not white youth, being cited for noise violations (Fridell, Lunney et al. 2001; Gross and Livingston 2002). A narrow definition is also to exclude activities that are legally supportable in terms of reasonable suspicion or probable cause, but are nonetheless racially biased, such as the use of pretext stops. Fridell, Lunney et al. (2001: 5) suggest the term ‘racially biased policing’ which ‘occurs when law enforcement inappropriately considers race or ethnicity in deciding with whom and how to intervene in an enforcement capacity.’ This definition has been adopted by a number of police departments as it appears more accurately to reflect a wide range of perceived injustices that affect police-community relations.

Protection under the Constitution

The Supreme Court’s decisions on the constitutionality of stops facilitates racially biased policing (Batton and Kadleck 2004). All stop and search activities fall under the

protections guaranteed under the Fourth Amendment to the Constitution. The Fourth Amendment protects the rights of people to be free from ‘unreasonable searches and seizures.’ The Supreme Court has held that a ‘search or seizure’ is unreasonable without articulable suspicion that an individual has committed or is about to commit a crime’(Harris 2002). Seizures can take two forms – arrests, which require probable cause that an individual has committed a crime and stops, which require only reasonable suspicion that crime is afoot (Cole 1999). Not every encounter between the police and citizens is considered a ‘seizure.’ In early cases, the Court has ruled that a police officer ‘seizes’ or detains a civilian ‘by means of physical force or show of authority,’ (*Terry v. Ohio* 1968: 19 n16). The remedy for a violation of this protection is the ‘exclusionary rule,’ which suppresses evidence where it is established that the search or seizure was unreasonable. The Court has described the ‘exclusionary rule’ as both a ‘judicial remedy’ made available to defendants who have had their Fourth Amendment rights violated and a ‘deterrent’ against police illegality (Heffernan and Lovely 1991).

Discriminatory police actions are also covered by the Equal Protection Clause of the Fourteenth Amendment, which forbids unequal treatment on the basis of race. The central purpose of the Fourteenth Amendment was to eliminate racial discrimination perpetrated by the government or state agencies. The Equal Protection Clause ‘is essentially a direction that all persons similarly situated should be treated alike’ (Shuford 1999: 375). Yet in practice, the value of the Equal Protection Clause as a remedy for police discrimination in stop and search is limited by the difficulty of proof. The Equal Protection Clause would only be applied if it could be proved that an officer stopped someone solely on the basis of their race. As noted, in reality stops are more likely to be made (or at least explained) on the basis of a mixture of factors that interact with race. ‘As a result, few

cases are litigated, and the legal doctrine remains undeveloped. Even the central issue of remedy is unsettled. The Supreme Court had left the question open and few lower court opinions address the issue' (Gross and Barnes 2002: 741).

Terry v. Ohio

By the mid 1960s stop and frisk had developed as a much used law enforcement tactic, as was recognised by the state of New York, who enacted laws to govern its use (Harris 2002). The practice was upheld and regulated in the United States Supreme Court's landmark decision, *Terry v. Ohio*, 392 U.S.1 (1968). In *Terry*, a police officer observed two men pacing up and down a city street, repeatedly peering into a jewellery store window. The officer suspecting that the men were casing the store for armed robbery but lacking the probable cause, approached the men, asked them some questions and frisked them. A pistol was found on Terry and he was subsequently arrested. He claimed in court that the evidence had been obtained in violation of his Fourth Amendment rights (Cole 1999). Ohio argued that the stop was not a full arrest thus not triggering Fourth Amendment protections. The Court held that the stop was a 'seizure' triggering Fourth Amendment rights but that brief investigatory stops could be justified by 'reasonable suspicion,' a standard lesser than probable cause (*Terry v. Ohio*: 1968). To conduct a stop a police officer must be able to articulate 'reasonable suspicion,' a reasonable belief based on experience, observations and information from the public that criminal activity is afoot and warrants police intervention. To conduct a frisk a police officer must reasonably believe that the suspect is armed and dangerous – either the officer has observed a weapon or a telltale bulge under clothing or the officer suspects involvement in violent crime. The frisk is limited to a pat down of the outer clothing to determine if the suspect is carrying a weapon. If a stop and frisk is ruled unconstitutional then the 'exclusionary rule' ensures

that weapons will not be permitted into evidence. The stated aims of stop and frisk are to detect and prevent crime while ensuring officer safety. The Court (1968: 16-17) noted the social costs associated with stop and frisk:

[I]t is simply fantastic to urge that a [stop and frisk] procedure performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a 'petty indignity.' It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly.

The *Terry* decision thus recognised law enforcement's need for a response to suspicious circumstances, short of arrest, while upholding the Constitution's mandate protecting citizens from unreasonable searches and seizures. Although often overlooked, race was mentioned in the *Terry* decision, the Justices noting the long standing tensions that the aggressive use of stop and frisk aroused in minority communities, but questioned the value of rules to control discriminatory police behaviour (Harris 2001). Harris (2002: 39) contends that *Terry* introduced 'a new set of rules that regulated but also legitimized a high-discretion police practice, giving police much more formal latitude than they had ever had in these situations under the law.'

Weakened protection – From *Terry* to *Whren*

Limitations of *Terry*

In the thirty-five years since *Terry*, the Supreme Court has addressed stop and frisk in a handful of cases and in almost every case the decisions have broadened the scope of police discretion. Harris notes the importance of the 1981 case entitled *U.S. v. Cortez* (Harris 2002). On one hand the *Cortez* decision appeared to limit police discretion by further defining reasonable suspicion as 'particularized suspicion.' Officers' observations and intelligence must show that a particular individual may be involved in a crime, not just that someone may be involved. On the other hand, the Court ordered that judges hearing cases

on stop and frisk in lower courts across the country should display the utmost deference to police judgement and actions. Judges should presume that officers have acted correctly and examine cases from the perspective of the officers involved (449 U.S. (1982)). Harris argues that *Cortez* has allowed lower courts – federal trial, appellate and state courts - to circumvent the Supreme Court’s strict *Terry* rules. The law established in *Terry* provides a baseline standard of reasonable suspicion. Yet it is lower courts which decide a great deal of *Terry* cases and their decisions have formed the body of rules governing stop and frisk encounters. This body of law is strikingly at odds with the principle of ‘particularized suspicion’ (Harris 2002).

A frisk should only occur if an officer suspects either a violent crime or the presence of a weapon. Lower courts at both state and federal level have diluted the requirement of danger. Instead they have constructed a system of categories to decide whether or not someone is dangerous enough to frisk. Instead of considering whether there was reasonable suspicion that an individual was involved in violent crime or may be carrying a weapon, they ask whether all suspects in a particular category of crime should be considered dangerous (Harris 2002). Harris uses the example of drug offences to illustrate this point. Decisions made after *Terry* showed that officers made widespread use of stop and frisk on individuals suspected of large-scale drug trafficking. Judges reasoned that as large-scale drug traffickers were likely to be armed, police officers could stop and frisk them automatically on the suspicion they were involved in drug offences without particularized suspicion. Subsequent cases expanded the notion of ‘automatic frisks’ to include low-level drug distributors and in recent decisions, courts have decided that all dealers including those at the lowest level on street corners can be automatically frisked. ‘Thus, we now have an entire category of automatic-frisk crimes – drug offences, which

make up a huge proportion of all arrests and jailings today – to which the Supreme Court’s rules routinely do not apply’ (Harris 2002: 42 - 43). Some courts have also determined that burglary and gambling are dangerous crimes with the likelihood that those involved are likely to carry a weapon, so that officers can automatically frisk individuals they suspect are involved in such crimes without specific suspicion (Harris 2002). The Supreme Court has not stopped this erosion of the *Terry* frisk rules despite having opportunities to do so (Bast 1997; Barlow and Barlow 2002; Harris 2002).

The Court initially ruled that reasonable suspicion was not satisfied by the observation that an individual was in a ‘high-crime neighbourhood’ or had associated with known drugs users (Cole 1999). Yet lower courts have again deferred to the police on questions of reasonable suspicion. In the justifications offered by officers for stopping pedestrians on the street, two themes frequently emerge – the location of the stop and evasive behaviour by the suspect upon seeing officers. Locations are often referred to as ‘high-crime areas,’ ‘drug-trafficking location’ or ‘hot spots.’ The labelling of areas as ‘high crime’ means that everybody seen within the area is thus subject to suspicion. Many stop and frisk cases centre around the behaviour of the suspects upon seeing the police. A common scenario is that officers driving around a ‘high-crime area’ are spotted by a person who then turns and walks or runs away. The assumption is that evading police officers shows a guilty conscience or the hiding of a crime. Some courts have decided that flight alone is enough to provide reasonable suspicion – one ambiguous action makes a person a suspect. Other courts while not accepting location or evasion alone, have accepted that a combination of both factors constitutes reasonable suspicion. In *Illinois v. Wardlow* (2000) the Supreme Court approved this interpretation of reasonable suspicion. They determined that ‘headlong flight’ is an act of evasion and that evasion teamed with location was enough to

support the officers' 'commonsense judgements' (*Illinois v. Wardlow*, 528 U.S. 2000).

Harris (2002: 47) declares the *Wardlow* decision as 'open season on the inner city.' Many innocent people will live or work in designated high crime areas, particularly minorities or people on low incomes. The experience of being stopped and frisked is embarrassing and intrusive, thus many people will seek to avoid such encounters, and this evasion thus provides the legal basis for further stop and frisks.

Failure of Constitutional protection

Many commentators have pointed to the inability of legal constraints to control the behaviour of officers on the street for a variety of reasons, which include officers' inability to understand the complicated legal rulings, the weakening of the exclusionary rule and the development and sanctioning of practices such as consent searches and pretext stops that circumvent the requirement of reasonable suspicion. Legal standards are often viewed as, at best, specifying the minimum required of the police – demarcating the boundary between what is and what is not acceptable (Bittner 2005). Yet it is questionable whether the police are meeting even these 'minimum' legal standards. Gould and Mastrofski (2004) advance three explanations to explain police non-compliance with the Constitution. The first is the notion of legitimacy; the greater the acceptance and respect for the Constitutional principles regulating search and seizure, the greater the likelihood that officers will follow these rules. Officers may believe in the rightness of those rules and protections or just take seriously their formal obligation to uphold the rules laid out by the courts. A second explanation is a rational calculation of the personal benefits and costs of failing to comply with the rules. An officer may be predisposed to follow the Constitutional search practices when the officer calculates that the risks of not doing so (departmental sanction or a case being thrown out of court) are greater than the benefits (increased arrests). A third factor

considers social factors that may cause the police to distribute Constitutional or non-Constitutional searches in a selective manner. A variety of social dimensions – race, wealth, gender, culture, organisational affiliation – will determine how an officer conducts a search. For example, wealthy suspects may be searched within the Constitutional boundaries as officers may reason that they are capable of retaining a competent attorney (2004: 321 – 322). All three factors are influenced by the legal, organisational and social environments in which officers work.

There are very few studies exploring how often police searches of suspects fall outside the Constitutional boundaries of reasonable suspicion (Fagan 2004). Often the only indication of illegal stop and searches is when cases come to court, meaning much unconstitutional behaviour remains obscured. Gould and Mastrofski's (2004) observational study of a medium-sized American city (Middleberg) evaluates police searches against Constitutional standards. The study reviewed and coded data from trained field observers recorded over a three-month period in the early 1990s. The observations were conducted in each of the city's patrol beats on each work shift and with members of the special patrol units in each precinct. Constitutionality of observed searches was then determined by a three person team including a faculty member, student assistant and a practicing attorney. Despite the limitations of the study – only one jurisdiction is represented and the number of searchers observed is relatively small, the study offers a picture of the constitutionality of searches in a police department in a medium-sized city in the middle of illicit drug shipment routes. Of the 115 searches (including full searches and frisks) conducted by the 44 officers that were observed, 30% violated Fourth Amendment standards on searches and seizures (2004: 331). The majority of the unconstitutional searches, 31 out of 34, were invisible to court inspection because they did not result in citation or arrest (2004: 332). In fact the rate of

unconstitutional searches was higher for suspects that were released – 44%, compared with 7% who were arrested (2004: 332). When focusing exclusively on stop and frisk searches an even higher number – 46% were unconstitutional (2004: 333). Moreover, 84% of all searches observed involved black suspects (2004: 339).

In a discussion of their findings, Gould and Mastrofski suggest that the degree of intrusiveness of a search is likely to bear on the conduct of searches. Officers may feel that stop and frisk is less intrusive than for example a full body cavity search and so is less likely to result in complaint. The observations took place in the height of the War on Drugs. Middleberg's management placed a high value on reducing drug trafficking and related crimes which was translated to the organisation through a system offering constant incentives to search and seize drugs and disrupt dealing. So when officers were assigned to 'drugs patrols' or undertook self-initiated searches for drugs during routine shifts, the risk of constitutional violation may have been greater (2004: 335). The authors conclude that the 'police are pushing the Fourth Amendment to the verge or beyond what is legally permissible' (2004: 347).

If so many violations of the Constitution take place out of the courts gaze, what of those that do reach the courts? There are very few studies that have assessed how many cases have evidence suppressed under the exclusionary rule due to violations of the Fourth Amendment. A National Institute of Justice study in California found that 16.5% of all cases were rejected, 4.8% of these or a total of 0.8% of total cases were lost due to search and seizure problems (quoted in Fyfe 2004: 382). No study has found that more than 2% of cases have been lost due to the exclusion of evidence under the Fourth Amendment (Fyfe 2004: 382). Despite this there have been attempts to undermine the existing limited

protections. The courts have allowed for some exceptions to the exclusionary rule when the police make 'good faith' mistakes in carrying out searches and seizures (Heffernan and Lovely 1991).

There is some evidence to suggest that police officers have only limited knowledge of search and seizure laws. One national study of officers concluded 'a significant percentage of line uniformed officers in states with law on warrantless searches and seizures no more restrictive than United States Supreme Court decisions have practically no working knowledge of that law' (Memory 1988: 34). A study by Heffernan and Lovely (1991) in four mid-sized north-eastern police departments tested officers' knowledge of search and seizure laws through questionnaires containing hypothetical search scenarios. They found that even extensively trained officers were mistaken about a quarter of the time (1991: 369). 'The rules of search and seizure, however, are sufficiently vague that even the best-informed officers are routinely mistaken about what they may and may not do' (1991: 339). Heffernan and Lovely conclude that the exclusionary rule fails to work as a deterrent on two levels. Firstly, deterrence can only work if officers are aware of what is expected of them, which clearly many are not and secondly; if officers believe that breaking those rules will result in punishment. About half the officers surveyed indicated that they would carry out a stop and search they believed was illegal in at least one of the six scenarios described on the questionnaire (1991: 369). Although there are large variations between police departments, overall there appears to be no tracing mechanism for recording the cases where evidence is suppressed or allowed under 'good faith' exceptions attributable to individual officers (whether due to lack of knowledge or wilful breaking of the law) hence little departmental action is taken to reprimand officers or discover gaps in training.

Consent

What little Constitutional guarantees there are can simply be circumvented by an officer asking a citizen for permission to search their person or property. The Fourth Amendment guarantees the right of a citizen to refuse to consent to a search and the Supreme Court has upheld ‘consent searches’ as long as the government can demonstrate that consent was ‘voluntary’(Cole 1999). Citizens have the right to refuse these requests, but the police are not required to inform people that they can say no. The Court has argued on various occasions that consent searches are an important investigative tool and that this might be hindered if the police are required to tell suspects the truth. This reasoning assumes that if people are aware of their rights they will exercise them hence foiling crime investigation efforts, and if a person does refuse consent to a search that will be the end of the matter. A thesis by Lichtenberg, tests the idea of voluntariness (quoted in Harris 2002). Using records of more than nine thousand consent searches in Maryland and Ohio, Lichtenberg found that about 90 percent of drivers who were asked for consent gave it. There were no significant differences in rates of consent when data was broken down by age, sex or race (quoted in Harris 2002: 34). Even when warnings of the right to refuse were given drivers still consented (Ibid.). Almost everyone consents. People consent to police officers not because they make a free choice to grant consent but because that is how people respond to the authority of the police.

Cole highlights the case of *Florida v. Bostick* (1989, Supreme Court appeal 1991) as illustration the fallacy of the Court’s assumptions. Bostick, a 28 year old black man was sleeping on the back of a Greyhound bus, on his way to Miami from Atlanta, when he awoke to find two police officers wearing bright green ‘raid’ jackets standing over him. The bus was on a layover in Fort Lauderdale and the Broward County Sheriff’s officers

were 'working the bus' looking for people who might be carrying drugs. The officers asked Bostick for identification, his ticket and consent to search his bag, which he inexplicably gave because the officers found a pound of cocaine (Cole 1999). Bostick challenged the officers' conduct in the Florida Supreme Court. The court upheld that the search was unconstitutional because Bostick had been effectively been 'seized' when officers cornered him at the back of the bus. The Supreme Court overturned the ruling. In previous cases the Court had ruled that a person is 'seized' by means of physical force or when restrained by an officer but the Court determined that the relevant question was whether a 'reasonable person' would feel free to disregard the officers' request and walk away. Cole (1999: 18) terms this jurisprudence the 'reasonable person fiction' as the Court's test ignores the inherently coercive nature of *all* police encounters. The Court's 'reasonable person' has a lot more nerve than most people, as few woken in the middle of a long bus journey would feel able to refuse a request to search given by armed police. The Court's 'one-size-fits-all reasonable person standard' also ignores social reality by failing to take into account that citizens may be differently situated with respect to encounters with the police (Cole 1999). For example, a fourteen year old boy would feel less able to terminate an encounter than a middle-aged lawyer, even if all other aspects of the encounter were the same. 'Yet the Supreme Court has held that the reasonable person standard "does not vary with the state of mind of the particular individual being approached," and "calls for consistent application from one police encounter to the next, regardless of the particular individual's response to the actions of the police"'(1999: 22). The Court has ruled that failure to give consent 'without more' does not justify a search but it has not ruled if refusal to consent can be one factor among others contributing to the justification for a non-consensual stop or search. 'The very fact that the law is unclear on this point means that a citizen confronted by the police cannot know whether her choice to say no will be held

against her' (1999: 33). Pretext stops, like consent also undermine Constitutional protections.

Whren v. United States

If an officer observes a traffic offence, no matter how trivial it is, it gives them probable cause to stop the vehicle or pedestrians and begin investigating. 'The point is not that all police officers are looking for the tiniest infraction so they can conduct a traffic stop; rather, if police officers *want* to, they *can* stop any driver they like, simply by following the car for a short distance'(Harris 2002: 31-2). Harris (2001: 254) notes that, in the jurisdiction where he used to work, the police had a 'three block' rule: no driver could drive for longer than three blocks without violating some aspect of the traffic code. Ironically, as Barlow and Barlow (2002: 337) note, 'if a police officer follows a car for a long time and the driver fails to make any driving error, then the driver fits the old established criminal profile of driving too cautiously.' Police discretion over traffic stops is thus virtually unlimited. The use of a traffic violation as a pretext for investigating other crimes, in particular drug offences is extremely common and blacks and Latino/as are disproportionately targeted by the practice (Cole 1999). In 1996, the Supreme Court formally sanctioned this approach in *Whren v. United States*. Two plainclothes officers in an unmarked patrol car in a 'high-crime area' noticed two young black men in a Nissan Pathfinder stopped at a stop sign. Under the law in Washington D.C. it is a traffic violation to stop *too long* at a stop sign. The officers suspected that the occupants of the vehicle may be carrying drugs so they used the traffic violation to pursue and pull over the vehicle. The officers admitted in Court that they had no interest in enforcing the traffic laws. The Supreme Court unanimously upheld the stop, ruling that as long as the officer observes a traffic violation the stop is Constitutional even if the officer had no intention of enforcing

the law violated (*Whren v. United States*, 116 S. Ct.1769, 1996). This decision undermines all probable cause and reasonable suspicion protections. It becomes not a case of who is breaking the law, but rather, against whom do police officers choose to enforce the law. As one federal judge complained at the time, the standard ‘frees a police officer to target members of minority groups for selective enforcement’ (Cole 1999: 40).

Cole argues that the weakening of the Fourth Amendment protections through court decisions such as *Cortez*, *Wardlow*, *Bostick* and *Whren*, amounts to double standards. He (1999: 53) argues:

In effect, the Supreme Court has immunized a wide range of law enforcement from any Fourth Amendment review. All these tactics are disproportionately directed at persons of color [sic]. The Court’s removal of meaningful Fourth Amendment review allows the police to rely on unparticularized discretion, unsubstantiated hunches, and nonindividualized suspicion. Racial prejudice and stereotypes linking racial minorities to crime rush to fill the void. As a result, many innocent minorities are stopped, questioned, and searched on a routine basis, reinforcing a sense among members of minority communities that the police are their enemy, and that they have been singled out for suspicion because of the color [sic] of their skin.

A number of studies have begun to document how these practices disproportionately impact on minority communities.

Patterns

New Jersey

Early indications that race is being used as a criteria in investigatory traffic stops emerged from the courts. A criminal case involving the New Jersey Highway Patrol and civil case involving the Maryland State Police produced aggregate traffic stop data to help prove the existence of disproportionate traffic stop practices. In the late 1980s and early 1990s African Americans complained that state troopers were repeatedly targeting them on the New Jersey Turnpike. In 1994, a number of defendants who alleged that the New Jersey

State Troopers had stopped them due to their race filed a motion to suppress evidence.

State v. Pedro Soto (743 A. 2d 350 N.J. Super. Ct. Law. Div. 1996). Dr. Lamberth served as the expert in the case. To determine whether black travellers were being disproportionately stopped and searched, Lamberth's methodology measured how many blacks were being stopped and searched and/or arrested, the percentage of black drivers among drivers on the highway and the population of traffic violators broken down by race. This was done through an analysis of patrol activity and police radio logs, direct observations of who was using the highway at different locations and different times and a rolling survey conducted by observers in cars driving down the turnpike observing drivers passing them that violated the speed limit and their race. Lamberth's definition of 'violation' is controversial but has a supportable rationale (Buerger and Farrell 2002). Lamberth found that everybody, regardless of race, violate traffic laws at almost exactly the same high rate; thus driving behaviour could not be used to explain differences in how officers might treat black and white drivers. Black drivers made up 13% of they drivers on the Turnpike and 15% of the drivers who were seen speeding yet the comprised 35% of those stopped and 73.2% of those arrested (quoted in Harris 2002: 53-60). The *Soto* decision introduced the term racial profiling into the public vocabulary. The *Soto* case also became the benchmark for subsequent racial profiling cases: 'Racial disparities in stop rates establish a prima facie, though rebuttable, case of discrimination' (Buerger and Farrell 2002: 280).

Maryland

A short time after the New Jersey case, a study of traffic stops by the Maryland State Police found similar disparities. An African-American lawyer, Roy Wilkins and his family were stopped, questioned and subject to a drug-sniffing dog search of their car on the Interstate

95 between Baltimore and Delaware. Wilkins filed a federal law suit against the Maryland State Police, *Wilkins v. Maryland State Police* (filed 1993), alleging that the stop had only occurred because of his race. When police memos instructing troopers to look for drug couriers –described as ‘mostly black males and females’ emerged, - the State Police settled the case. As part of the settlement, they agreed to provide the court records of all stop and searches conducted with and without driver’s consent for the previous two years.

Lamberth (1993) and his team were hired and used the same methodology as in New Jersey to determine if racially biased stops were taking place. Lamberth found that 74.7% of speeders were white and 17.5% were black (1993: 4 - 5). Yet, according to Maryland State Police data, black drivers comprised 79.2% of those searched.

New Jersey II

A shooting on the New Jersey Turnpike in 1998 again led to further study of racial profiling in New Jersey and was important because it began to speak directly to the larger issue of institutional racism (Buerger and Farrell 2002). The facts of the case are in dispute but what is known is that two troopers stopped a van carrying four unarmed men (three Latino, one black), which they searched unsuccessfully for drugs. During the process three of the occupants of the van were shot by the troopers. Criminal charges were brought against the troopers. During the investigation into the incident it was discovered that the troopers had been falsifying stop records: jotting down white motorists’ licence plate numbers and using them on reports of black motorist who were pulled over. The troopers were clearly aware of the scrutiny in the wake of the *Soto* decision and took steps to mask a deliberate practice of selective stops based on race (Buerger and Farrell 2002). Those defending the troopers argued that they were following directives from the agency or acting in accordance with an unofficial but widespread culture that was tolerated or even tacitly

encouraged. Comments made by Colonel Carl A. Williams, head of the New Jersey State Police in February 1999 seem to confirm these suspicions: 'the drug problem is mostly cocaine or marijuana. It is most likely a minority group that's involved with that... When the president of the United States wanted to discuss international drug trafficking, he went to talk to the president of Mexico, not England or Ireland' (Associated Press 1999). In February 1999, federal civil rights investigators revealed the existence of a two year investigation on racial profiling; shortly afterwards, the Department of Justice threatened to file a suit against the state alleging 'pattern and practice' of racial discrimination⁵. The state entered into a five year consent decree with the Department of Justice, which committed the state to 97 corrective measures including internal monitoring - the recording of all traffic stops and post stop actions, written consent for consent searches and external review by an independent monitor (Buerger and Farrell 2002).

Shortly after, the Attorney General issued his taskforce report based on an examination of statistics on traffic stops from 1997 and 1998, a period following the *Soto* decision. The report found that 'minority motorists have been treated differently in the course of stops on the New Jersey Turnpike... [t]he problem of disparate treatment is real - not imagined' (Verniero and Zoubek 1999: 4). The report found that 40% of all traffic stops involved a racial minority and that blacks made up one in four of all persons stopped (1999: 26). The data on searches showed an even larger bias: almost 80% of searches involved a black or Latino/a driver (1999: 27). The report also broke down the citations issued by type of

⁵ Section 1414 of the Violent Crime Control and Law Enforcement Act (1994) gives the US Department of Justice the power to bring to suit any police department that engages in a 'pattern or practice' of violating citizens' rights. Following complaints from citizens or civil society, the Department of Justice have the power to conduct thorough investigations if there is evidence that violations of citizen's rights have become ingrained in policies and practice. In almost all cases, this has resulted in a settlement between the department and the jurisdiction, in which the police department agrees to change its training, collect data on traffic and pedestrian stops and develop early warning systems to track officer misconduct and use of force (Harris 2005: 66 – 74).

enforcement unit – radar units, which track speed, exercised relatively little discretion; tactical patrol units, which focus on vehicle law enforcement with particular objectives in particular locations, exercise somewhat more discretion; and general patrol units exercised the most discretion. The more discretion a unit exercised, the report found, the greater proportion of tickets went to African-American drivers: radar 18%, tactical patrol 23.8% and general patrol 34.2% (1999: 31 – 32). Disproportionality was even greater for tickets issued south of turnpike exit 3, with the general patrol unit issuing 43.8% of its tickets to African-Americans (Ibid.). This means that ‘officers who had more time to devote to drug interdiction may have been more likely to rely upon racial or ethnic stereotypes’ (Ibid.). Perhaps more telling was the hit rate (the rate at which contraband is found or people are arrested) of the consent searches: 13.5% of cars driven by blacks, 10.5% of cars driven by whites and 8.1% of cars driven by Latino/as contained drugs (Ibid.). Interestingly, the report indicates that in many instances the amount of drugs found was small, indicating personal use rather than trafficking and suggesting that the yield was insufficient to justify the level of intrusion into peoples’ lives that searches represent. The report essentially conceded that consent searches are an ineffective tool against drug trafficking and that the practices of New Jersey State Police on the Turnpike were generating fear, anger and resentment among minorities and making law enforcement’s job more difficult by eroding public trust in the police.

New York City

One of the most far-reaching studies into racially biased policing was conducted in 1999 by Spitzer, the then New York State Attorney General. In the wake of the murder by police officers of an unarmed black man, Amadou Diallo after a ‘stop’ and continued complaints by ethnic minority groups regarding law enforcement, the Attorney General held public

consultations all over New York City. These revealed that most complaints about policing focused on low-level interactions and not the well-publicised cases of extreme abuse. Stop and frisk encounters, road stops, and Zero Tolerance law enforcement techniques were cited as a major source of tension between the police and ethnic minorities. The New York Police Department has argued that stop and frisk was an essential part of their Zero Tolerance crime-fighting strategy and efforts to remove guns from the streets. African-Americans and Latino/as attending the consultations argued that it was being misused against their communities and was undermining confidence in the NYPD. The law in *Terry* set the benchmark requiring ‘reasonable suspicion’ in stop and frisk encounters. The New York Court of Appeals, using the principles of state law, established a multi-tiered (more stringent) standard for justifying police-civilian street encounters. Each progressive level allows a specified level of interference with the person and consequently requires escalating suspicion on the part of the officer (Office of the Attorney General of the State of New York 1999).

The study consisted of a quantitative analysis of 175,000 ‘UF-250’ forms, the forms officers are required to complete after a stop. It found that blacks comprise 25.6% of the city’s population yet comprised 50.6% of all people stopped and frisked. Latino/as comprise 23.7% of the city’s population, yet made up 33.0% of all stop and frisks. In contrast whites formed 43.4% of New York City’s population but accounted for only 12.9% of stop and frisks (1999: 94 – 95). The study also analysed the use of stop and frisk by different police precincts and units. The (now disbanded) Street Crimes Unit (‘SCU’) accounted for over 10 percent of all stops made in New York during the period studied and blacks comprise 25.6% of these stops (1999: 109). Minorities were at greater risk of being stopped in areas where they constituted a distinct minority. In areas where African-

Americans and Latino/as comprised less than ten percent of the total population, they represented 30% and 23.4% of the stops respectively in those areas (1999: 106). The report demonstrates that relatively few stops resulted in an arrest. The New York Police Department stopped 9.5 African-Americans, 8.8 Latino/as and 7.9 whites for every one arrest (1999: 111). The disparity was even greater for the Street Crimes Unit, which stopped 16.3 African-Americans, 14.5 Latino/as and 9.6 whites for every one arrest (1999: 117). The report went on to explore the hypothesis that a higher crime rate in minority areas explains the higher rates at which minorities are stopped. The crime rate was used to predict the numbers of stops for each precinct; precincts (mostly minority precincts) had stop rates higher than would be predicted based solely on their crime rate. In contrast, precincts with low numbers of stops (mainly white precincts) had stop rates far below what would be predicted based on their crime rates (1999: 131). Not only were stops disproportionate and ineffective but a detailed analyses of 15,000 forms showed that a significant percentage were also unlawful. Using the information provided by the officers on the UF-250 forms, the justification for 15.4% or one in seven stops did not meet the legal requirement of reasonable suspicion (1999: 160 – 162). A quarter of the forms did not provide sufficient detail to determine if reasonable suspicion was present. This points to a failure of supervisory officers, who are required to check forms submitted by officers, to check and take action on incomplete stop forms.

Costs

The New York City report includes narratives from minority New Yorkers detailing their experiences of being stopped. These accounts illustrate the intrusive, frightening and embarrassing nature of stop and frisk. They also point to the social costs of disproportionate and excessive use of stop and frisk. A Reverend from a church in the

Bronx describes the mistrust of the police articulated by the African-American and Latino males in the congregation after numerous encounters with the police. Ms. Davis a 54 year old woman from Brooklyn recounts the humiliation of a stop and frisk that has left her with medical problems and a fear of walking alone in her neighbourhood (1999: 81 – 89).

Disproportionate use of stop and search has sweeping consequences for minority communities. The individual targeted and detained must endure the inconvenience of a stop that can last a considerable time if a canine unit is summoned and the vehicle searched and the humiliation of being searched and treated like a potential criminal (Batton and Kadleck 2004). 'At stake for many individuals will be more than simply one stop; at stake will be a lifetime of numerous stops' (Kennedy 1999: 157). Racial profiling affects the wider minority community and deepens the mistrust between communities and the police. This, in turn affects the extent to which minorities are likely to cooperate in criminal investigation and rely on the police to control crime in their neighbourhoods. Kennedy (1999: 157) outlines these experiences:

Alienation of this sort gives rise to witnesses who fail to cooperate with the police, citizens who view prosecutors as 'the enemy,' lawyers who disdain the rules they have sworn to uphold, and jurors who yearn to 'get even' with the system that has, in their eyes, consistently mistreated them. For the sake of law enforcement, we need to be mindful of the deep reservoir of anger towards the police that now exists within many racial minority neighbourhoods. Racial profiling is a big part of what keeps this pool of accumulated rage filled to the brim.

For the police, the use of race or ethnicity as an indicator of criminal propensity may function as a 'slippery slope' that facilitates increased use of aggressive policing tactics targeted at minority communities (Kennedy 1997). It contributes to a self-fulfilling prophecy for the police about who the criminals are and where crime is likely to occur (Batton and Kadleck 2004). The costs to wider society include the perpetuation of stereotypes about minorities' propensity to commit crime, which in turn produces

‘exaggerated levels of fear and more pronounced levels of scapegoating’ (Shuford 1999: 379).

The methodology debate

The studies described above illustrate the four different contexts that have led to the collection of stop and search data – voluntary collection, civil cases, Department of Justice ‘pattern and practice’ suits leading to consent decrees, and criminal cases. Today there are data collection efforts in more than 700 United States law enforcement agencies and 14 states have passed legislation mandating racial profiling polices (McMahon, Garner et al. 2002). Only the states of Vermont, North Dakota, Mississippi and Hawaii do not have some form of data collection programmes (Northeastern Data Collection Center: 2006). The most frequent tool for disseminating this data has been on the Internet, as the reports of many local and state police agencies are now available online.

Thus a vast array of police-citizen contact studies are emerging from different sized police departments all over America. While most of the analysis reported shows that police pedestrian and vehicle stops are not proportional to the racial distribution of that jurisdiction’s resident population and almost every study shows racial disproportionality in police searches, most studies do not conclude that the police are engaging in racial profiling (Engel, Calnon et al. 2002; McMahon, Garner et al. 2002) (See Appendix 2 for summary of studies and their conclusions). Instead, the focus of debates around racial profiling has been on developing methodologies that allow definitive conclusions as to whether officers in a particular police department are engaging in racial profiling when they decide whom to stop, search or arrest.

The methodological and empirical issues involved in data collection and interpretation are numerous and complex (Ramirez, McDevitt et al. 2000). Studies vary greatly in their size, level of detail, methodological rigor and the analysis conducted. The different contexts that have led to data collection have resulted in huge differences in what is actually being studied (see Appendix 2). Most studies collect data on just traffic stops, some focus on all police-citizen interactions including traffic and pedestrian stops. Only the New York City study has focused solely on pedestrian stops. There have also been racial profiling studies of open air drug markets, retail establishments and drug sweeps of people boarding trains (Lamberth 2005). There are a variety of methods for recording stop information, including paper forms, 'scan-tron' forms that can be read by computers and systems for communicating essential information about the stop over the police radio, which the dispatcher then enters onto an electronic database. Most studies are conducted for a set time period in line with the terms of the court settlement or consent decree; a few departments such as the Los Angeles Police Department collect data continuously.

Characteristics of stops

There remains disagreement over what type of stop data should be collected by officers. Identifying and defining populations at risk of being profiled is central in the design of methodologies to study the phenomena. Although some studies have focused solely on the experience of black drivers, other ethnic minorities are likely to be targeted. Mann (1993) notes that stereotypes linking race and ethnicity with a propensity to commit crime centres on African-Americans, Latino/as or Native Americans, depending on the crime and area of the country. The racial and ethnic categories used in police record keeping vary across the country (Ramirez, McDevitt et al. 2000). It is logical that ethnic categories should be socially meaningful within the jurisdiction being studied but this often makes attempts at

wider comparison difficult (Batton and Kadleck 2004). Although they often do not match citizens' self classifications, all studies use officers' determinations of the race and ethnicity of the person they are stopping as it is their perceptions rather than the actual race of a person that are central to the issue of racial profiling (Cleary 2000).

Anecdotal evidence suggests that the nature of the encounter is a crucial aspect of racial profiling (Fridell, Lunney et al. 2001; Barlow and Barlow 2002). Yet there remains little agreement on what characteristics of an incident should be recorded by the police.

Characteristics such as length of stop, searches, disposition of a stop and use of force have all been included in some studies. A study of the North Carolina State Highway Patrol measured the length of the stop and then computed mean delay times by race (Zingraff, Mason et al. 2000). Many studies break down the percentages of searches by race but few distinguish between the different types of searches available (search incident to arrest, stop and frisk, consent, Fourth Amendment waiver, canine alert) and their racial breakdown (Batton and Kadleck 2004). Some studies, such as in Las Vegas Metropolitan Police Department have measured restraint (in the form of handcuffing) used during a stop (McCorkle 2003). It is also possible that people are placed in the back of the police car while their car is searched or held at gunpoint but racial disparities in this treatment are yet to be measured. Many studies include a record of the disposition of the stop, whether the person was arrested as a result of a stop and search, issued a verbal or written warning, issued a citation or released with no further action (Ramirez, McDevitt et al. 2000; Fridell, Lunney et al. 2001).

The 'denominator problem'

The major methodological debate has revolved around the ‘denominator problem’, or which benchmark or baseline to measure the stop data against (see: Ramirez, McDevitt et al. 2000; see: Fridell, Lunney et al. 2001; McMahon, Garner et al. 2002; Fridell 2004; Withrow 2004). This mirrors debates about measuring available population that have taken place in the UK. Engel, Calnon et al. (2002: 202) suggest that the reason for such varied interpretations of the racial disparities evident in the majority of studies is that ‘there is no agreement about what constitutes a reliable and valid base rate.’ Studies of police-citizen contacts have relied on four primary techniques for gathering benchmark data: census or residential population data, field observation data, assessments of violating behaviour and internal departmental comparisons. Most of these relate to the study of disparities in traffic stops.

Estimates of population figures provided by the census are the most widely used benchmark. Many researchers refine this information by using racial percentages of the driving age population (Smith and Petrocelli 2001). The use of census data has been widely criticised because the population estimates for a particular area may not accurately represent those walking or driving in that area. A nationwide transportation survey showed that blacks are less likely than both whites and Latino/as to have driving licences and that minorities are more likely than whites to use public transit as their primary means of transportation (Federal Highway Administration 1995). Using such data as a benchmark assumes that the racial or ethnic composition of an area is the same as the composition of individuals that routinely break the traffic laws (Withrow 2004). It is also accepted that police surveillance is not equally distributed throughout an area or population. Based on these concerns, Rojek, Rosenfeld et al. (2004) have developed a measure of the driving population based on spatial weighting. Using mapping software and spatial statistics, a

procedure was developed which gives different weight to residents, nearby non-residents and non-residents from larger areas. The estimated driving populations based on spatial weights different significantly from straight census population figures (Rojek, Rosenfeld et al. 2004).

Lambeth's study (1994) of the New Jersey Turnpike was the first to adopt a benchmark based on systematic field observations of actual road users. Lamberth randomly selected 18 observation sites, which were visited randomly during daytime hours over a two-week period in 1993. Observers were located at two stationary observation points on the New Jersey Turnpike and alternated between the two locations several times a day. Observers recorded the race (using a simple black-white classification) of the driver and any passengers as well as the state of registration for the vehicle. Observers noted a high degree of confidence in their ability to observe this data. Another observational technique involves rolling surveys, in which researchers drive along pre-selected routes at constant speed recording information about drivers who pass them or whom they pass. At the end of the route, researchers repeat the process travelling in the opposite direction and continue this routine until an adequate sample size is obtained (Withrow 2004). Using an odds ratio, the benchmarks are then compared against the police stop data for each of the observation sites. If the odds ratio for any racial or ethnic group is 1.0, racial profiling is not occurring. If it is higher than 1.5 then racial profiling is said to be occurring in that observation site. Observations are the only benchmark that has been accepted by courts (Lamberth 2005). Yet critics have noted how costly and time-consuming observational studies can be and questioned the reliability and validity of researchers perceptions of drivers' characteristics which cannot later be assessed (Engel, Calnon et al. 2002; Withrow 2004).

Observing who is using a road or highway does not answer the larger question of who is more likely to be stopped by the police for violating traffic laws. The possibility that groups differ in their driving patterns or in their rate or degree of violating behaviour thus explaining any disparity in numbers of stops has recently been considered (Lange, Johnson et al. 2005). Lamberth (1996) initiated the first efforts to establish a baseline of law-violating driving behaviours in New Jersey and Maryland. The 'carousel method,' involves observers driving at a constant speed at 5 miles over the local speed limits and recording the characteristics of drivers that pass them. Using this technique, Lambeth reported that 98% and 93% of drivers in New Jersey and Maryland respectively, were violating the speed limits; however white and black drivers drove indistinguishably (1996: 26). A major limitation of this early methodology is that it is unable to determine how far above the speed limit that motorists were travelling. Most police organisations have informal policies regarding the amount above a speed limit at which a citation will be issued, thus the 'carousel method' fails to capture the seriousness of motorists' driving infractions and thus their real risk of being stopped by the police (Engel, Calnon et al. 2002). Smith and Petrocelli (2001) attempted to overcome this problem in a study of highways in North Carolina. Groups of observers used stopwatches to measure the time it took vehicles to pass the distance from the rear bumper to the front bumper of the observers' vehicle that was travelling at a constant speed, while also recording the drivers' and passengers' characteristics and the state of the registration. Although this methodology allowed researchers to address the issue of differences in the severity of drivers breaking the speed limits, as the authors acknowledge it does not fully examine the risk of being stopped as motorists differ in their levels of 'speeding savvy,' where they are able to speed without being detected (Smith and Petrocelli 2001). Most assessments of traffic violating behaviour have focused on the violation of speeding, so can tell us little about the rates of

other traffic violating behaviour (such as running red lights, failure to come to a complete stop at a stop sign and jaywalking) or offending behaviour in different contexts (such as pedestrian stops).

Some police organisations have used internal departmental benchmarks. Essentially, officers' rates of stops, searches, issuing of citations and arrests of ethnic minorities are compared to other officers working in similar assignments, areas or shifts. These comparisons often form part of larger management tools or 'early warning systems' that are used to identify problem officers. Early warning systems are 'data-based management information systems that systematically collect and analyze officer performance data for the purpose of identifying those officers who receive an unusually high rate of citizen complaints, are involved in a high rate of use of force incidents, or whose records indicate other forms of problematic behavior' (Walker 2001: 82). Walker (2001: 84) has argued that early warning systems are a 'promising but not fully proven' tool for achieving police accountability and examining rates of police stop and search use. There are two major limitations of using an early warning approach. Firstly, early warning systems are not effective in cases where an entire police department is engaging in racial profiling since the behaviour of all officers will appear roughly the same. The same argument can be made in relation to entire shifts, units or districts within departments. Without comparison to some other criteria it would be very difficult to determine the validity of using police activity measures as the benchmark. Secondly, early warning systems require individual officers to be identified on stop forms so that their activity can later be compared. Under pressure from police officers and unions, most police departments collecting traffic and pedestrian data do not include individual identifies. Thus, not enough data is collected under early warning systems to make using internal comparisons a reliable benchmark (Walker 2001).

The focus on how to collect data, data integrity, which characteristics to record and the selection of an appropriate benchmark has created a body of studies that show racial disparities in stop and search rates but are unable (or unwilling) to draw definitive conclusions and therefore have little explanatory value beyond their local contexts. There remains a lack of wider quantitative studies and qualitative studies that could be used in explaining why such disparities occur.

Explanations of stop patterns

‘Good policing’

The methodological debates as well as the lack of a universal definition of racial profiling have allowed racial disparities to be justified and very often ignored. The initial allegations of racial profiling were flatly denied by law enforcement agencies. This was possible when narrow definitions charged officers with stopping people *solely* because of their race and ethnicity. When the early studies began to demonstrate that profiling was taking place the denial changed to justification. The argument goes that racial profiling is simply ‘good policing,’ more minorities commit crime hence police officers target them (MacDonald 2001). Kennedy (1999: 154) notes:

[d]efenders of racial profiling maintain that, in areas where young African-American males commit a disproportionate number of the street crimes, the cops are justified in scrutinizing that sector of the population more closely than others... For [some] cops, racial profiling is a sensible, statistically based tool that enables law enforcement to focus their energies more efficiently... Racial profiling then is good police work... empirically based, and above all, an effective tool in fighting crime.

A spokesperson from the Maryland State Police illustrates these beliefs: ‘Its not racism; rather, it is the unfortunate by product of sound police policies’ (quoted in Harris 2002: 79-80). So called the ‘alternative hypothesis’ (Fridell 2004), some have repeatedly claimed

that officers primarily stop these who are egregiously violating the traffic laws and that the disparities in traffic stop data reflect the fact that minorities egregiously violated traffic laws more frequently than non-minorities. There is little data to back up this assertion. One study by Lange, Johnson and Voas (2005) suggests that officers on the New Jersey Turnpike stop at rates equal to traffic law breaking. Extending Lamberth's work in New Jersey, an observation of speeding rates were collected by measuring the speeds and capturing high-resolution photographs of a sample of vehicles on the Turnpike. A team of coders examined each photograph to determine the race or ethnicity of the driver and vehicle speeds were used to determine if a driver was a speeder (travelling 15 miles over the speed limit) or non-speeder. The study found that the majority of drivers from all ethnic backgrounds are non-speeders, the average speed for black and white drivers were similar at 66.3 and 66.8 mph respectively (2005: 218). Only 1.8 percent of white drivers and 2.7 percent of black drivers drove at or above 80 mph (2005: 218). The authors conclude that the results offer a plausible explanation for the over-representation of black drivers in traffic stops and underscore weaknesses in existing methodologies for assessing the existence of racial profiling in a department or jurisdiction.

This data is contrary to earlier findings that found no difference in speeding behaviour or that black drivers were less likely to speed (Lamberth 1994; McCorkle 2003). A study of stops made by the nine largest police agencies in Nevada also measured the number of miles per hour the driver was travelling over the speed limit. This study broke speeding down into four categories 1-5, 6-10, 11-15 and 16+ mph over the speed limit. Black drivers are lower than the average in the first three categories and second to the lowest in the 16+ category (McCorkle 2003: 5). The evidence from the majority of highway studies shows that officers are not primarily stopping motorists who are egregiously violating the

traffic laws. A study based on focus groups with officers in San Diego indicated that one quarter of stops were pretext stops that were actually made for non-traffic related reasons, such as suspicion of crime, drugs or gang-related activities (although officers usually observe and cite some kind of traffic violation as the reason for the vehicle stop) (Cordner, Williams et al. 2002: 3). If we work from the assumption that most officers will cite drivers who they stop for the most serious offences and will not use their discretion erroneously, there is also evidence to show that most traffic stops do not result in a citation. Thus highlighting the trivial nature of many stops. In New Jersey it was estimated that about 60 percent of stops did not result in a citation (Lamberth 1994). The evidence suggests that when minority drivers are stopped they are less likely to be cited, in Nevada 62 % of black drivers, 68% of Hispanic drivers and 70% of white drivers were issued citations during the study (McCorkle 2003: 6). The assumption again is that an officer will not stop someone for a serious offence and fail to write a citation. These studies collectively suggest that the majority of black and Latino/a drivers stopped are not egregious traffic violators but are stopped for other reasons.

The belief that minority groups are disproportionately involved in crime becomes a self-fulfilling prophecy. If the police look for drugs amongst black drivers and pedestrians; they will find drugs disproportionately amongst black drivers and pedestrians. This will mean more black and minority people are arrested, prosecuted, convicted and jailed, thus reinforcing the idea that ethnic minorities are disproportionately involved in drug crimes, resulting in continued motive and justification for stopping bad drivers and pedestrians as a rational way of catching more criminals (Barlow and Barlow 2002; Harris 2002). The reasoning employed by police officers who use racial profiling for drug enforcement is particularly flawed as whites and blacks use drugs at similar rates, slightly higher than

Latino/as. Recent estimates suggest that whites account for 70% of drug users; while African Americans comprise only 12% of drug users, although they account for 35% of those arrested for drug offences (Barlow and Barlow 2002). Rather than racial profiling being a rational and effective tool, the findings from many police departments confirm that using race as part of a profile does not enhance the ability of the police to interdict drugs or weapons. Indeed, collectively these studies show that it is counterproductive to ‘good policing’ because quite simply it doesn’t work (Harris 2002; Ramirez, Hoopes et al. 2003).

Another way to evaluate the existence of racial disparities is to examine the productivity of searches for different ethnic groups. This productivity is often called the ‘hit rate’ or the proportion of searches that are ‘successful’ because they uncover contraband or other ‘seizable’ evidence (Farrell, Rumminger et al. 2005).⁶ One of the most prominent features of stop data is its consistency in showing similar hit rates across all ethnic groups. The table below presents the hit rates of different ethnic groups from a random selection of studies:

⁶ Knowles, Percisco et al. (2001) argue that similar hit rates for blacks and whites actually indicate that there is no discrimination. They argue that disparities in police decision-making reflect either racial prejudice or rational statistical discrimination, in which the police care not about race but are simply looking to maximise their hit rate. Therefore, it is not rational to get the same hit rate for everyone. This may mean that blacks get stopped more but the resulting hit rate is the same indicating that the police have reached an equilibrium point with regard their search decisions. This argument is unpersuasive. It assumes that police officers are taking rational decisions to maximise their hit rate. The police assert that they stop a disproportionate number of black drivers not because they are black but that black drivers are more likely to be suspicious. If this is the case the hit rates for blacks should be higher than other groups. The assessment of suspiciousness is more strongly associated with race than with criminality.

Study	White	Black	Latino/as
Denver Police Department (contraband seized) 2001 - 2002	Traffic: 17.5% Ped: 20.4%	Traffic: 28.8% Ped: 21.5%	Traffic: 11.4% Ped: 16.1%
Las Vegas Metropolitan Police Department (seizures) 2003	12.6%	9.6%	8.6%
Maryland State Patrol (arrests or seizures) 1995 - 1996	28.8%	28.4%	N/A
New Jersey State Patrol (seizures) 2000	25%	13%	5%
New York City (arrests) 1998 - 1999	12.6%	10.5%	11.5%
North Carolina State Patrol (seizures) 1999	33%	26%	N/A
San Diego Police Department (contraband seized) 2001	11.7%	12.4%	5.0%
San Francisco Police Department (contraband seized) 2001	22.4%	15.4%	10.0%

Table of hit rates from randomly selected studies (see Appendix 2 for full overview).

Lamberth (1998: C1) concludes:

The racial profiling studies uniformly show that [the] widely shared assumption [of different rates of criminal involvement] is false. Police stops yield no significant difference in so-called hit rates – percentages of searches that find evidence of lawbreaking – for minorities and whites. If blacks are carrying drugs more often than whites, police should find drugs on the blacks they stop more often than on the whites they stop. But they don't.

An interesting experience is that of the U.S. Custom Service (1998). In 1998, 43% of searches that Customs performed were on blacks and Latino/as. The hit rates across all groups were low: white – 5.8%, black 5.9% and Latino/as 1.4%. Even more startling was the gender profiling which was demonstrated to be taking place. Black and Latina women were more likely to be x-rayed and strip-searched on suspicion of internal drug smuggling than either white men or women or black and Latino men, despite the fact they were

actually least likely to be found carrying drugs in their bodies (U.S. Customs Service 1998). In 1999, Customs changed its stop and search procedures removing race from the factors considered when stops were made. Instead, Customs agents used observational techniques focusing on behaviours such as nervousness and inconsistencies in passenger explanations; intelligence and improved the supervision of stop and search decisions. By 2000, the racial disparities in Customs searches had nearly disappeared. Customs conducted 75% fewer searches and their hit rate improved from approximately under 5% to over 13%, the hit rate for all ethnic groups had become almost even (Harris 2002: 220-222). Using intelligence based race-neutral criteria allowed Customs to improve its effectiveness while stopping fewer innocent people, the vast majority of whom were people of colour. Thus using race as part of a profile does not help law enforcement determine who is carrying contraband. In fact it hinders law enforcement because it prevents them from catching suspects who might not possess those characteristics and hinders police-community relations (Ramirez, Hoopes et al. 2003). The Customs Service's new search policy has been well received because not only did it modify its procedures for selecting passengers to search but it improved its general treatment of passengers. The belief that one has been racially profiled often reflects the feeling that you have mistreated by a police officer during a stop (Stuntz 2002; Banks 2003). Customs's agents were taught to treat people with respect, act in a courteous manner and explain the reason for the stop. This served to lessen the injustice felt and perception of racial profiling after a stop (U.S. Customs Service 1998).

Officer decision-making

The methodologies developed for data collection have focused on proving whether or not individual officers make stops based on race. Barlow and Barlow (2002: 341) note, '[t]he

difficulty with gathering scientific data in this area is that it is nearly impossible to measure whether stops are racially motivated. Racially motivated stops are usually predicated on some other justification or pretext or the racial factor is conspicuously, and often skilfully, left out of police reports.’ There is a dearth of qualitative research to explain how officers make the decision to stop and what factors inform their suspicions.

Meehan and Ponder (2002) draw attention to the association between race and place. Conceptions of place and the people who occupy places are critically linked to police assessments of suspiciousness. Studies based on police stop records overlook an earlier step in the decision-making process – police use of their in-car computers (often called Mobile Data Terminals or MDTs) to surveil drivers, which may not result in further action and a record of the encounter. Meehan and Ponder conducted a review of queries made on MDTs, observed officers on shift and conducted interviews with officers at all levels in a suburban police department. To create a benchmark, they conducted a separate rolling roadway observation of motorists using the roadways in this suburb. The queries are stored electronically, although they do not record race, but the residential segregation in the city allowed researchers fairly accurately to assign race to queries on the basis of where a person lives. Based on 3,716 queries made by 111 officers during their proactive time over two weeks in April 2000, Meehan and Ponder found that officers make more queries than stops; over the same period only 333 stops were recorded (2002: 412).

Meehan and Ponder find that 13% of drivers are African American, whereas 27% of all proactive police queries were about African American drivers (2002: 416). Whites, who constitute 87% of the drivers, made up 73% of the queries, a ratio of 2.1 to 0.8 (Ibid.). Yet this effect is not constant and changes dramatically from one sector of the city to another.

Border streets between poor-wealthy or black-white neighbourhoods are often referred to by police officers as ‘demilitarised’ or ‘combat’ zones. As there are more African-American drivers in these sectors, one might expect a higher rate of queries on black drivers, but the reverse is the case. African Americans are not considered out of place and are queried only slightly more than whites. As African Americans move from border sectors towards wealthy white areas their chances of being subject to a query dramatically increase. In the two sectors, which are adjacent and contain the largest pockets of wealthier white neighbourhoods, African American drivers have query rates 325% and 383% greater than their percentage of the driving population (2002: 417). These disparities are also evident in stops; black drivers are more likely to be stopped in these wealthy white areas. By comparison, whites have about the same chance of being subject to a query throughout the whole city. Meehan and Ponder went on to test the hunches of officers making queries. They (2002: 420) find: ‘African American drivers in these whiter, nonborder sectors, who are subject to the higher levels of query surveillance, are the *least* likely to have legal problems (i.e. hits)’. Meehan and Ponder conclude that the police operate with a concept of who belongs in an area and make queries and stops accordingly. They (2002: 402) note ‘the practice of racial profiling is inextricably tied not only to race, but to officers’ conceptions of place, of what *should* typically occur in an areas and *who belongs*, as well as *where they belong*.’ This reflects generalisations made by officers and suburban residents alike and is aimed at preservation of places. Although, they found that a small group of high-using MDT officers consistently surveilled and stopped blacks in border and nonborder areas, the problem was spread across the department.

Dunham, Alpert et al. (2005) also examine officers’ formation of suspicion and decision-making prior to stopping and questioning people. Based on observations of 132 shifts with

officers in Savannah, Georgia, researchers found that on average officers form suspicion 1.3 times during a shift. The majority of persons who aroused the suspicion of officers or who were stopped were male, (74.0%), minority group members (71.0%) and averaged 32 years of age (2005: 373 - 374). Researchers used four categories arousing suspicion: appearance of an individual and/or a vehicle (distinctive dress, indicators of class, vehicle type, colour, condition), behaviour (overt actions by an individual or vehicle that seems inappropriate, illegal or bizarre), time and place (officers' knowledge of a particular location and activities that should or should not be expected there at a particular time) and information (as provided by fellow officers, the public or dispatchers).

Dunham, Alpert et al. found that for the most part officers formed suspicions using legitimate criteria. In the majority of cases (66%), the officers told the observer that the behaviour of the suspect was the main reason for suspicion (2005: 374). An analysis of the observers' description of behaviour showed that the most common forms of behavioural suspicion for vehicles and pedestrians was a traffic violation (e.g. running a red light, driving with expired license plates), avoiding officers (walking the other way upon seeing an officer, hiding face) or acting nervously in the presence of an officer. More than 18% of stops were based on information provided by Dispatch or a fellow officer. This relayed information usually involved suspect characteristics or vehicles thought to be related to specific crimes. Nearly 10% of reasons given for becoming suspicious were related to time and space. These cases involved officers drawing on their knowledge of a particular location (i.e. park, warehouse district) and of the activities that should be expected there at a particular time (i.e. during daytime, after hours). There were a wide variety of situations that cause officers to become suspicious such as a car driving too slowly in the warehouse district late at night and passengers in a car who did not match the ethnicity of the

neighbourhood in which they were driving (particularly at night). Finally, 6% of the reasons for getting suspicious were based on appearance of a person. An analysis of observers' descriptions reveals that officers suspicious were aroused by heavily tinted windows, a dirty or damaged vehicle, an individual wearing gang colours, or an individual looking strung out like a drug addict (2005: 374-379).

Approximately three fourths (77.1%) of officers observed reported using some type of working rule to help them identify suspicious persons or to determine how to handle a particular situation. For example, one officer states that he liked to go after stolen cars because 'you can get guns, drugs and robbery suspects from these stops,' another officers stated that he would issue a warning to the first African American and the first Caucasian that he stopped, to ensure he was being fair and would then start issuing tickets (2005: 380). The researchers found that once an officer became suspicious of a person, they were equally likely to stop that individual regardless of race, sex, age or class. The type of area had the most significant effect on whether a stop was made by an officer; the majority of suspicions were formed in residential areas, and the greatest percentage of stops take place in commercial areas. It also had an impact on whether or not a suspect was frisked. Suspects were more likely to be frisked if the area they were stopped in was private or residential. Dunham, Alpert et al. observed very few problematic attitudes and behaviours, although they did uncover some stops which were based on non-behavioural criteria. They fail to note whether they consider using race, along with other factors (such as black drivers in a mainly white residential area) as being a stop not based on acceptable behavioural criteria. They conclude that changing police officers' attitude alone will not change behaviour on the street; training must be supported by close supervision to ensure that

officers are following the guidelines and policies of the department and not their own working rules.

Institutional issues

The use of localised studies on racially biased policing has made it difficult to chart national trends or examine larger institutional issues that may affect who is stopped. Some have suggested that ‘disproportionate contacts between officers and citizens may be an unanticipated by product of the war on drugs [WOD], the get-tough-on-crime movement, [or] Zero-Tolerance policing’ (Novak 2004: 66). In the presence of racial residential segregation, differential enforcement and deployment impacts ethnic groups unequally. In the 1980s, the war on drugs became the primary concern of law enforcement, ‘the “result-orientated” focus of this “war” created an atmosphere in which stereotypes about African Americans’ drug use and drug dealing contributed to disproportionate police enforcement of drug laws against African Americans’ (Meehan and Ponder 2002: 404). The war on drugs facilitates increased targeting and aggressive styles of policing in poor and minority communities as many law enforcement programmes created under the WOD to deal with illegal drugs and street-level dealing focus on these neighbourhoods (American Civil Liberties Union 1999; Glasser 2000). Police departments often reap the benefits of drug traffic interdictions because assets associated with drug offences may be forfeited to the department (Novak 2004). Police leaders can also provide much impetus for racially biased policing by encouraging and rewarding drug arrests. Drug arrests in poor urban communities, often largely populated by ethnic minorities, are easier than in most other contexts because of the open street-market dealing characteristics of these communities (Chambliss 1999). Barlow and Barlow (2002: 340) note: ‘[p]olice departments come to rely on federal funds tied to their ability to demonstrate success in the area of drug

enforcement, and large numbers of drug arrest are offered up as evidence that a police department is successfully winning the hopeless war against drugs.’ Suggesting the degree to which drug arrests (focused in minority areas) result from unsubstantiated or illegally obtained evidence, Barlow and Barlow (2002: 340) note a 1993 study by the California State Assembly that found that 92% of black men arrested by the police were subsequently released due to lack of or inadmissible evidence.

Anti-gang efforts are another area in which laws and initiatives have promoted disproportionate focus on minority communities. The problem of youth gangs is not new, but in recent decades gang membership and public fear of gangs has increased (Kim 1996). Two tools that state governments and law enforcement agencies have created to combat gangs are loitering laws and gang profiles. Many cities have enacted loitering laws specifically to target groups of youths hanging around (Roberts 1999). For example, in 1992 the Chicago City Council adopted a loitering ordinance that gave the police exceptionally broad powers to disperse any groups of two or more people standing in public if the police suspect that the group includes a gang member. Any person who failed promptly to disperse was subject to arrest and six months in prison. Robert (1999: 782) argues ‘the city council deliberately made the law’s reach exceptionally wide so that persons who are undesirable in the eyes of the police and prosecutors can be convicted even though they are not chargeable with any other particular offence.’ During the three years the law was in effect, the police issues 89,000 orders to disperse and arrested 42,000 people, most of whom were black or Latino/a residents of inner city neighbourhoods (1999: 775).

Astonishing numbers of black youths appear on gang profiles, which the police department then use as a basis for making stops. Gang profiles list criteria, such as clothing, territory and identification by an informant for helping officers identify gang members or associates. This raises the issue of what is deemed legitimate intelligence. ‘These profiles assume the criminality of gangs and gang members and fail to address the social aspects of these groups’ (Kim 1996: 266). In Fresno, California, law enforcement used a standardised list of ten criteria to vet ‘street terrorists.’ These include: admitting to gang membership, associating with a gang member, corresponding with a gang member, having one’s name appear on a gang document (such as a letter), being identified as a gang member by another police agency, having gang style tattoos, and wearing gang clothing, such as red or blue jackets and baggy trousers (Parenti 1999). If a person meets three of the criteria, they are entered on the California Gang database as a gang member. If they meet two criteria they are listed as an associate. As Parenti (1999: 122) notes ‘[t]his self-amplifying epistemology generates “offenders” at an exponential rate. Consider the escalating sequence: association with “known gang members” plus baggy pants and *voila* they open a gang dossier on you. Write a letter to your incarcerated cousin, an alleged gangbanger, and you are moved up the scale a notch from “associate” to “active gang member.”’ So over-inclusive are these profiles that in Denver, Colorado, police officers compiled a list of suspected gang members that included two of every three young black men in the city (Miller 1996: 109). Although white gangs do exist the image of gangs has been racialised. In Orange County, California, of the 14, 609 identified gang members, approximately 75% are Latinos and the rest are mostly Asian (Kim 1996: 275). Gang profiles are often used to instigate investigative stops, thus circumventing the *Terry* requirement of reasonable suspicion based on behaviour (Kim 1996).

Old practices, new targets

The terrorist attacks of September 11th 2001 have changed the almost universal condemnation of profiling. A survey conducted in 2002 found that 66% of Americans agreed that racial profiling of Middle Easterners is ‘understandable but you wish it didn’t happen.’ Another 11 percent stated that they found ‘nothing particularly wrong’ with profiling (Fiala 2003: 54). Arabs, Muslims, South Asians and Sikhs have found themselves subjected to pedestrian and traffic stops and searches; ‘driving while Arab’ has joined the profiling lexicon (Amnesty International 2004; Leadership Conference on Civil Rights Education Fund 2004). Yet despite the same costs and inefficiencies, official condemnation of profiling in the counter-terrorism context has been slow to emerge as it is suggested that to do so will hinder the war on terrorism and undermine national security.

Regulation

Many commentators believe that data collection provides a critical basis for ending racial profiling. Some have highlighted the symbolic role of data collection, indicating a commitment on the part of the police department to address community needs and concerns (Farrell, McDevitt et al. 2002). Others cite methodological problems with data collection as a reason to avoid engaging in data collection efforts. As a result, data collection and analysis have been the main concern in discussions of how to address racial profiling. Since the emphasis has been on the collection of data, there is very little published about remedial actions taken after the discovery of disparities, or ongoing efforts to ensure powers are used equitably. The failure of many studies to identify individual officers and the limited period that data is collected means that it is unlikely that the data could form part of ongoing internal and external monitoring of police stop practices.

There is little national regulation in this area. In 2001 and again in 2004, Congressman John Conyers Jr. (D-Mich.) and Senator Russell Feingold (D-Wis.) introduced the End Racial Profiling Act. The bill aims to end the practice by attaching conditions to federal law enforcement spending; police departments that want these funds would have to end racial profiling and collect stop and search statistics to monitor activity. The bill would enable citizens to sue police departments when they have been subject to a pattern of profiling and makes additional funds available for departments to improve their efforts to create accountability, through measures such as training, in-car video cameras and data collection systems. Neither act has been passed into law.

In June 2003, the U.S. Department of Justice produced federal guidelines on addressing racial profiling, which were sent to all federal law enforcement agencies, and asked them to review their policies and procedures. The guidelines provide a definition of racial profiling, as using race or ethnicity in the making of routine or spontaneous law enforcement decisions to any degree, except where part of the description of a known suspect. The guidelines (2003: 3) state:

[s]tereotyping certain races as having a greater propensity to commit crimes is absolutely prohibited. Some have argued that overall discrepancies in crime rates among racial groups could justify using race as a factor in general traffic enforcement activities and would produce a greater number of arrests for non-traffic offences (e.g. narcotics trafficking). We emphatically reject this view. It is patently unacceptable and thus prohibited under this guidance for federal law enforcement officers to engage in racial profiling.

The report provides explicit examples of what constitutes racial profiling and under what circumstances race or ethnicity can be included within a suspect description. They note, in order for information to be considered a legitimate investigative lead, the information must be relevant to the locality of time frame of the criminal activity, be trustworthy and information concerning identifying characteristics must be tied to a particular criminal

intent, scheme or organisation. The guidelines (2003: 4 – 5) provide the following example:

The FBI is investigating the murder of a known gang member and has information that the shooter is a member of a rival gang. The FBI knows that the members of the rival gang are exclusively members of a certain ethnicity. This information, however, is not suspect-specific because there is no description of the particular assailant. But because authorities have reliable, locally relevant information linking a rival group with a distinctive ethnic character to the murder, federal law enforcement officers could properly consider ethnicity in conjunction with other appropriate factors in the course of conducting their investigation. Agents could properly decide to focus on persons dressed in a manner consistent with gang activity, but ignore persons dressed in that manner who do not appear to be members of that particular ethnicity.

Yet, this remains only a guideline – not a law or executive order. It contains no mechanism for enforcement or method for tracking whether or not agencies are complying with it. Thus it remains up to the individual federal agencies as to whether they choose to comply and how they will do so. The guidelines only apply to federal agencies thus do nothing to address these practices in state or local agencies, where the overwhelming number of routine traffic and pedestrian stops occur (Harris 2003). Most importantly, the guidelines contain broad exceptions for national security and immigration purposes. As Harris (2003: 3) notes ‘Any use of racial or ethnic characteristics by law enforcement that could be labelled as important to national security remains unaffected. Given the administration’s willingness today to argue that so many executive branch decisions are matters of national security, and its strong penchant for secrecy in general that preceded Sept. 11th, 2001, the national security exception is literally limitless.’ Similarly broad are the exceptions for immigration, an area which has shown a willingness to use profiles against certain groups (Bender 2002; Harris 2003). There thus remains no effective national legislation banning profiling and instituting a standard system for collecting, monitoring, analysing and addressing data.

This chapter has explored the legal powers on which officers make stops. It has reviewed a range of studies that highlight that these powers are being disproportionately used against minority communities. The methodology debate has preoccupied researchers and resulted in little qualitative analysis to explain why such patterns exist. The next chapter explores the methodology used in this thesis in an effort to redress this unbalance.

METHODOLOGY

5

Previous chapters have provided a theoretical conceptualisation of institutional racism and explored the socio-legal literature on the police use of stop and search UK and US. In this thesis I study police officers from two forces in the UK and two police departments in the US. I used semi-structured interviews, observations and drew on official policy documents and statistics. The research is concerned with police officers as actors, who mould and are moulded by the work they undertake and the environment in which they work. The purpose of the research is to gain an understanding of the circumstances and decision-making by officers as they conduct stop and search and to understand the context in which these decisions take place. This work builds on the tradition of police research (Cain 1973; Manning 1977; Ericson 1982; Holdaway 1983) and more specifically on research on stop and search (Black and Reiss 1967; Smith and Gray 1983; FitzGerald 1999; Quinton, Bland et al. 2000; Gould and Mastrofski 2004; Dunham, Alpert et al. 2005). National statistics in the UK show large differences between forces in both numbers and focus of stop and searches. While in the US, studies have focused on individual forces and so these comparisons have not been made. In order to illuminate these differences, this study compares different policing areas in each force, as well as comparing two forces in each country to explore the local contexts that impact on stop and search use.

In his article 'On watching the watchers,' Van Maanen (1978: 310) complains that 'the actual process by which such information [in many studies] has been generated remains something of a mystery.' He criticises the 'shroud of silence' under which social scientists have been granted access to conduct research in police settings and notes that '[v]ery few published studies have discussed the negotiation process by which a specific research site was chosen and secured' (Van Maanen 1978: 323). As Norris (1993: 124) notes 'unless one knows the constraints under which the researchers were operating and the degree of penetration they had gained within the organisation, it is difficult to assess the reliability of their findings.' With this in mind, the following discussion aims to provide an account of the research process and the problems encountered in securing and maintaining access.

The negotiation process

Police officers are notoriously difficult to gain access to for the purpose of research. This was my experience. The negotiation process was long and frustrating. It began in February 2002 with telephone enquires to the public relations offices in two large UK police forces. Having no existing links with any police officer or force I hoped to determine the best way to approach these forces. Having been told to put my request in writing, this is what I did and waited for a response.

When I had still not received a response by May 2002, I attempted a different approach. By chance on the MA programme within my department was a former Head of the Probation Service and current member of the Police Authority for one of the large metropolitan forces I had contacted. He was happy to help. After discussing my project

with various individuals within the force he was able to develop interest in the research and provided the e-mail address of an officer to contact. Two months and three unanswered e-mails later, I asked my departmental contact to again get involved. In September 2002, I finally received a response and was given a contact person within the Performance Review Department of the organisation, who proved invaluable in securing access and negotiating the research process. I was asked to complete a formal research application.

Each interaction with the police subtly shaped the way in which the next contact was made and provided clues about areas of sensitivity within the police force. In my initial letters requesting access, I focused on the aim of empirically exploring the question of institutional racism by looking at issues surrounding stop and search. This clearly rang alarm bells in the officers that read my request. In future communications the project was presented in terms of questions related specifically to stop and search, such as investigating how far racial disparities arise from specific local crime fighting strategies and whether stop and search/stop and frisk is effective in these respects. Greater emphasis was placed on the benefits to be gained by the police forces from participating in the research and less on defining the contentious concept of institutional racism.

In February 2003, I met with an officer in the Performance Review Department of the first force. This interaction proved useful in providing exposure to the organisation and an initial understanding of the structures within it. The meeting provided the chance to discuss the objectives of the research; the manner in which it was to be conducted and how research findings were to be presented. The officer expressed concerns about data protection. In response to these concerns, I guaranteed to ensure the anonymity of all officers interviewed and observed and to mask the names of the police forces studied.

These guarantees were then offered to all the forces I approached. After this meeting, initial agreement for my research was given on the condition that I secured the agreement of a second UK force.

Determined to avoid another lengthy wait, I contacted a researcher who had recently completed research and had contacts within the Metropolitan Police Service, a force I had previously contacted. He advised that the large, complicated structure of this force meant that securing access for what could be perceived as controversial research would be difficult and time-consuming. He suggested instead that I try a smaller force that coincidentally borders the first I had already gained the provisional agreement of. The deputy chief constable of that first force who had expressed interest in the research had now been promoted to chief constable of this second force, so I wrote directly to him outlining the research. My request was eventually passed to the Force Community Safety Bureau, who have responsibility for monitoring stop and search within this force. Fortunately, this second force were in the process of delivering a training programme on the PACE Code of Practice (April 2004) changes and hoped that my research could be used to aid evaluation of this programme. I met with officers from this bureau on two occasions to discuss the research and was given their agreement in May 2003. To secure access, I was required to sign a research contract and agreed to modify the research to exclude any observations within this force. Due to this limitation, I treat this force and the second US force as minor case studies.

With the agreement of the second force in place, I was able finally to get the agreement of the first force without any changes to my research design and signed a research contract.

While waiting for my contact to organise the mechanics of my visit, there was a Police Authority public meeting on stop and search and the pilot of the Macpherson recommendation of recording all stops in one area within the city. After the meeting, I introduced myself to the chief superintendent and explained my research and that I had been given the approval of the chief constable of the force. I was able to negotiate a start date, the following week. The time it had taken to gain access to the UK forces meant that I would have four weeks with each force.

Once I realised the difficulties and time involved in negotiating access with the police in the UK, I began negotiating US access. This process was equally problematic. I initially approached the Chicago Police Department. Having studied at the University of Illinois several years previously, I was familiar with Chicago and this would make practical aspects of the fieldwork, such as finding accommodation and getting around the city easier. I contacted academics working in the field and asked for advice about approaching the Police Department. They were helpful and the initial response from the Chicago Police Department was positive. They provisionally agreed to the research and asked for references, which I supplied. In May 2003, two months after I had supplied the references I had had no further communication, so I e-mailed again to confirm dates and conditions. Several weeks later I received disappointing news; senior officers within the Chicago Police Department had changed their minds and cancelled my research visit. No reason was ever given.

In desperation, I sent out proposals to six city forces within the US. These were chosen because they had participated in previous research on stop and search (including both vehicles and pedestrians) or had been the subject of racial profiling court cases leading to

consent decrees. A city force in western America displayed initial interest and asked for more information and references. Despite phone calls and e-mails the other forces either ignored or rejected the research request. In August 2003, I sent out another batch of six proposals to cities across America, this time on the basis of previous research usually focused only on traffic stops. To my sheer delight one of these forces, a large city force also in the west, responded in one week. They were pleased to participate and happy to accept verbal guarantees requiring no research contract. Indeed, the deputy chief was so interested in the research that he offered to endorse it to the other US forces, which he did. In October 2003, the smaller first force agreed to participate in the research. Months later a force in the south of America responded to my proposal and invited me to conduct the research there. This would have perhaps provided a more useful geographical comparison to the two west coast forces, but it was too late to change the practical arrangements that had been made. I recognise the potential enhancement of the involvement of forces from different geographical coasts and those that had been subject to court settlements and consent decrees (thus forced to undertake substantial change in policy and practice of stop and frisk/search) would have brought to this study. But given the difficulties of access I was grateful for the willingness of the two west coast forces to participate in the research and believe the data collected provides a valuable insight into policing practice in the US. The fieldwork in America began in January 2004. Again, I arranged to spend 4-5 weeks with each force.

Although formal access was secured from the highest-ranking officers in each organisation, this did not necessarily translate into support and access from other members of the organisation. Gaining access required constant negotiation and explanation to a range of officers through the course of the study. Indeed, the success and smooth running of the

research depended very much on securing localised access. The most successful visits were the ones where I had the backing and organisational help of the individual area commanders, inspectors, lieutenants, sergeants and officers.

The research setting

The research was conducted in four police forces, two in the UK and two in the US. It began in July 2003 and was completed in April 2004.

Force 1 – Amberham Police Service⁷

Amberham is a large city in central England. The City of Amberham has a population of just under 1 million. Amberham is an ethnically and culturally diverse city. The 2001 census shows the composition as: 70.4% of the population white (including 3.2% Irish), 19.5% Asian, 6.1% black, 0.5% Chinese, and 3.5% of mixed or other ethnic heritage. Amberham is an important manufacturing and engineering centre; in recent years the economy has diversified into service industries, retail and tourism.

The Amberham Police Service is one of the largest forces in the country. The force is divided into 22 policing areas, each headed by a chief superintendent who is responsible for the overall policing and management of the area. Each policing area is split into a number of sectors - each headed by an inspector. These sectors are responsible for local policing in the community.

⁷ The names of cities are fictional to aid the reader and protect the anonymity of the forces and people who participated in this research. The descriptions of the cities and police departments are kept brief to give a flavour of each area while still protecting their identity.

Home Office statistics show that in the year 2002/3 (the time of the study), the Amberham Police Service conducted 23, 800 stop and searches under PACE section 1. Blacks were 4 times more likely to be stopped than whites and Asian 2 ½ times more likely to be stopped than whites. 17 % of all searches led to arrest; this breaks down to 16% of whites stopped, 21% of blacks stopped and 15% of Asians stopped. The Amberham Police Service conducted 19,000 searches under the section 60 power. Blacks and Asians were disproportionately stopped under these powers. Since the time of the study the numbers of stop and searches have grown and the disparities between ethnic groups has increased.

Force 2 – Brookshire Police Service

Brookshire is a county in central England. It takes its name from the heavily populated City of Brookshire, traditionally its administrative centre. The city is surrounded by smaller towns and villages and large areas of agricultural land. The county covers an area of around 800 square miles. The population of Brookshire is around 900,000. The 2001 Census shows the ethnic composition of the population as: 85.0% white, 11.9% Asian and 1.2% black. The ethnic minority population is concentrated in the City of Brookshire.

The Brookshire Police Service is a smaller force with under 3,000 officers. The area is divided into four geographical areas and 20 local policing units, each headed by an inspector.

Home Office statistics show that in the year 2002/3 (the time of the study), the Brookshire Police Service conducted over 10, 350 stop and searches under PACE section 1. Blacks were 5 ½ times more likely to be stopped than whites and Asian 1 ½ times more likely to be stopped than whites. 13 % of all searches led to arrest; this breaks down to 12% of

whites stopped, 16% of blacks stopped and 14% of Asians stopped. The Brookshire Police Service conducted 660 searches under the section 60 power. Since the time of the study the numbers of stop and searches have grown and the disparities between ethnic groups has increased.

Force 3 – New Town Police Department

New Town is in the western portion of the United States. It is one of the fastest growing cities in America, with an estimated 10,000 people moving there every month. This is reportedly due to the low taxes, relatively inexpensive housing and booming industry ensuring a high employment rate. It has a population approaching 2 million. The 2000 Census shows the composition of the population as 69.8% white, 10.3% African-American, 0.7% American Indian, 4.7 % Asian, 9.7% other and 23.6% Latino (of varying races) . The infrastructure is rushing to catch up with this growing population. The rapid expansion of the city means that it is less racially-segregated than most American cities, but there remain clearly recognisable poor and minority areas.

The New Town Police Department has around 4,500 employees (including sworn officers and support staff) making it one of the largest 15 police forces in the US. The department was officially formed in early 1970s when two smaller forces merged. The youth of the agency is reflected in the fact that 70% of the employees have less than 7 years experience. The department is headed by a chief of police and deputy chiefs that each control seven divisions including patrol, special operations, investigation services, technical services, human resources and detention. There are 8 policing areas: each is headed by a Captain – the area commander, and served by 4 lieutenants, between 18 – 22 sergeants and between 125 – 200 officers, depending on local population. The vastness of the city means that most

patrolling is done by officers in single crewed cars but there is also a bike patrol in the downtown area.

There have been a couple of high profile cases (that received wide media coverage) of young black and Latino men being stopped by the police. In response to these concerns the state legislature enacted a bill that required all forces to study the extent and nature of racial profiling. New Town Police Department collected data on traffic stops for one year. The New Town Police Department made over 180,000 traffic stops that year.⁸ 66% of these stops resulted in the driver being issued with a citation, 30% were given verbal warnings and 2% were arrested. The results show clear disproportions in the numbers of blacks and Latino/as stopped by the police and disparities in the number of searches conducted after stops, when compared to the driving age population. Despite this the hit rates are similar across all ethnic groups.

Force 4 – Greenville Police Department

Greenville is a city also located in the western United States. It covers an area of 155 square miles. It has a population approaching 600,000. According to the 2000 Census the demographic composition of Greenville is 51.9% white, 31.7% Latino/a (of varying races), 10.8% black, 0.7% American Indian, 2.7% Asian and 2.2% other. Greenville's economy is based partially on its geographic position and its connection to some of the major transportation systems of the country. It has become a natural location for storage and distribution of goods and services to the Mountain States. Over the years, the city has been home to some large corporations in the central United States, making Greenville a key trade point for the country. Geography also allows Greenville to have a considerable

⁸ The lack of national statistics and the different methodologies used in local racial profiling studies makes it impossible to make comparisons across forces on rates of stop use.

government presence, with many federal agencies based or having offices in the Greenville area.

The Greenville Police Department is an older, more established police department. The Greenville Police Department has under 1,400 officers and around 400 civilian administrative staff. The area divided into 70 precincts and 6 policing areas. The department is headed by a chief of police and deputy chiefs that each control 8 divisions including patrol, special operations, investigation services, technical service, human resources and detention. Each policing area is headed by an area commander at the rank of captain, staffed by 4 lieutenants, three who are covering the 24 hour shifts and one administrative lieutenant, then typically between 15-17 Sergeants and between 18 - 20 corporals and technicians who are the training officers and between 115 – 120 police officers, depending on the local population. In addition to the patrol function, it has specialist SWAT and Gang Bureaus.

In 2000 the State Legislature ordered the largest police departments in the state to collect stop data. The Chief of Greenville Police Department established a task force (made up of the police and community representatives) to look at the issue of racial profiling. The task force devised a two year data collection effort that saw officers recording stops of both traffic and pedestrian stops. The Greenville Police Department make around 155,000 traffic stops per year and 42,000 pedestrian stops. The data shows that there are disparities in the numbers of blacks stopped for pedestrian and traffic stops, when compared to their percentage of the population. Blacks were disproportionately more likely to be frisked during pedestrian stops and both blacks and Latino/as were disproportionately searched during traffic stops. Contraband seized during traffic stops was 15% and pedestrian stops

20%, hit rates were similar for blacks and whites and lower for Latino/as in both types of stops.

In each force I visited at least four different policing areas. These were chosen for their different socio-economic profiles.

Research execution

The problems encountered during the time spent negotiating access and gaining the agreement of all four forces unfortunately meant that there was no time to conduct a pilot study. Thus the research methods employed were refined and improved during the course of the study. Although the form of the research was the same, the design and my experiences varied greatly between the four forces. I had planned to spend the same amount of time, conduct the same numbers of interviews and observations and request similar documents at all four forces. In practice this was not always possible, various factors such as time, illness, and force cancellation, impeded this. For example, my visit to New Town Police Department coincided with the start of a new Citizen's Academy, a series of community meetings and a training course on diversity, that I was able to attend. Whereas in Greenville the Police Department had already held community meetings around stop and search and the anti-discrimination training had already taken place so I was unable to observe these.

Interviews

Interviews can yield rich insights into peoples' experiences, opinions, attitudes and feelings (May 1997). As a researcher in a new and very foreign land, the most instinctive way to develop knowledge is to ask a question. The procedure for selecting a sample of officers to

interview was far from ideal given the general difficulties in access and the demands of police work. The necessity of 'convenience sampling' (Corsianos 2003) makes it difficult to extrapolated the findings to the wider population of officers in each force or indeed other forces within each country. Nevertheless, I interviewed a range of officers in each station or unit, concentrating mainly on patrol officers; also speaking to a variety of senior officers. These interviews include a wide variety of ages, backgrounds, and lengths of service, in order to cover a variety of police tasks and experience (these are shown in Appendix 3). While not providing a complete picture, I believe the data collected provides a valid insight into decision-making by officers as they conduct stop and search and the contexts in which these decisions take place.

The nature of the sample varied from station to station. Responsibility for providing interviewees was generally designated to one of the sergeants on duty. In the majority of cases these individuals were friendly and helpful, although some of these sergeants had a greater understanding of research and so were more aware of the need to provide a balanced sample. On some occasions sergeants had pre-selected officers and provided a timetable for them to be interviewed. At other stations, I interviewed officers as and when they became available. This was dependent on calls for service, so sometimes there were officers available to be interviewed, other times there were none. Occasionally, interviews were ended if officers were needed to attend an urgent call for service. The interviews were semi-structured and lasted on average half an hour, with a few lasting an hour and a half and some lasting only 20 minutes. Interviews were conducted in the most private available space in the station where officers were based. Interviews were conducted over two or three days depending on how busy stations were. Interviews with senior officers were arranged on days and times most convenient for them.

At the start of each interview the purpose of the study and my credentials as a researcher were explained. Officers were then assured of their anonymity. The officers' names and badge numbers were not taken to reinforce this guarantee and in the hope of developing some level of trust and cooperation. I also provided this information in letter form for officers to take away if they so wished. All officers were asked whether they would prefer the interview not to be taped recorded. This offer was phrased in such a way to reassure officers that taping of interviews was to ensure the accuracy of material. I later transcribed these recordings as accurately as possible. In the UK, 20 percent of officers preferred not to be tape recorded, whereas in the US only one officer declined recording. In these instances, I took handwritten notes as accurately as possible but felt that these transcriptions often lost some of the nuances of the interview. Occasionally, officers agreed to be tape recorded, but after the interview was finished and the recorder turned off they continued talking, often giving more provocative responses to previous questions. Where possible I hand recorded these responses after they had left the room. Although officers are skilled in the art of conducting interviews, I found that many were unfamiliar with the experience of being interviewed (with the exception of senior officers); this displayed itself through nervousness particularly at the beginning. I employed semi-structured interviews that allowed the officers to develop and qualify their ideas (see Appendix 4 for interview schedules). The open-ended nature of the questions allowed officers to discuss issues tangential to the questions asked and these diversions often proved informative and encouraged rapport. I began all interviews by asking demographic information such as age, sex, self defined ethnicity, rank and length of time in the force. This was followed by a question relating to their current position and how much they were enjoying the job. It was hoped that officers would feel confident answering such questions

and relax into the interview situation. Subsequent questions were aimed at investigating their use of stop and search, their thoughts on the development of stop and search policies, and their experiences of recording, training and supervision. Interviews with senior officers were less standardised and included questions on development of stop and search policies, management of officers' use of stop and search powers and issues that had arisen during interviews with lower ranked officers.

Having often already conducted observations, I had a reasonable working knowledge of what officers' do, the environments in which they work and what kind of questions they would respond to. In Brookshire Police Department, where observations were not permitted, interviews were harder to conduct. At the start of a series of interviews in a station or area, I had very little 'insider information' in term of the local environment and culture. Without this it was hard to build rapport with officers and they were often suspicious (more officers in Brookshire declined to be tape recorded than in the other forces) and less informative in their responses. As I became more confident as an interviewer the style and flow of interviews improved. For the most part, officers were willing to participate and share their views, feelings and experiences. Some used the interview to express concerns or complaints at either a general or specific level. Some appeared happy to have someone interested in what they had to say. There were a few interviews where officers unable to decline participation refused to cooperate once in the interview, either by giving monosyllabic answers throughout or by repeating stock public relations answers to all questions. The majority of interviews followed the same pattern, officers began quite guarded but by the time they had got through the introductory questions they had warmed to the situation considerably and by the end of the interview (where I asked the most challenging questions) they responded relatively openly.

Observations

As Waddington (1999: 302) suggests, in order to ‘explain (and not just condemn) police behaviour on the streets, then we should look not in the remote recesses of what officers say in the canteen or privately to researchers, but in circumstances in which they act.’

Observations of officers on the street allowed me to explore the cues or indicators that are important in officer decision-making and the meanings of those indicators when officers are formulating suspicion or deciding whether to intervene formally. I conducted observations in three of the forces I visited. The observations were to provide an additional opportunity to increase my familiarity with the local policing environments, technical and organisational aspects of police work and police officers themselves. These observations were also to provide a source of ideas for constructing the interview guides. Observations took a similar form in each force. I spent one week with each station or unit. During this time I spent two or three days observing often followed by two or three days conducting interviews. With time being limited it was not possible to conduct observations in a systematic, sampled way that I would have liked. I instead opted to observe a range of shifts and special operations/events, with officers on their own, in pairs and in groups, at different times of the day and night. I also spent time in the stations, gaining familiarity with the systems and procedures, chatting to officers and attended community meetings and events. See Appendix 3 for a breakdown of observations and meetings and training courses attended.

Observations were usually arranged by sergeants in each station. I would arrive at the same time as the officers, sit through briefing sessions and then be assigned to the officers whom I would accompany throughout the shift. This allowed me to observe virtually every

aspect of uniformed police work. I spent time in cars and vans, on foot patrol, in the control room, in reception, in the interview room, in the canteen, at the training centre and so on. During observations, I carried a small note book and took notes on events, conversations, relationships and technical information such as how communications work and how stop and search records are processed. The content of the notes improved over time as I gained experience as a researcher. In the UK, many of the shifts I observed had periods of foot patrol. In the US, the forces I observed relied almost solely on vehicle patrols, thus I was able to take more detailed notes during these shifts.

Acceptance and access

The sensitivities around stop and search have been noted; the validity of the research findings are dependant upon the observation of 'normal' everyday police behaviour and the openness with which officers describe their behaviour in interviews. In her discussion of the various types of police research, Brown (1996: 179 – 86) provides a discussion of the insider/outsider status of police researchers. She argues that there are four main categories from full outsider to complete insider, with a number of positions in between. There are both advantages associated with being part of the group you are observing and also doing research from the position of being a total outsider. As an outsider, who had little experience of policing prior to the research it is important to note my probable lack of understanding of the nuances or underlying meanings of various exchanges and to be reflective about the social distance between myself and the officers I researched.

Hyman, Feldman and Stember's 1954 study displays an early concern about the effect of the demographic characteristics of the researcher on an interview. They found that white researchers received more socially acceptable responses from black respondents than white

respondents and black interviewers obtained more socially acceptable answers than did white interviewers, with differences predictably being greatest with regards questions on race. There has been much attention paid to racial or ethnic matching strategies in interviews as a 'solution' to the problems of racialised difference and distance (Gunaratnam 2003). Rhodes (1994: 550) has summarised the methodological implications from the literature as ones in which:

[c]loseness of identity and, in particular shared racial identity is generally presumed to promote effective communication between researcher and subject and, conversely, disparate identity to inhibit it.

Thus it has been argued that ethnic matching should be practiced wherever possible, because it will encourage a more equal context for interviewing which allows more sensitive and accurate information to be collected, will provide more favourable access and co-operation and ensure the researcher has a genuine interest in the health and welfare of their community (Papadopoulos and Lees 2002). As Gunaratnam (2003) notes matching strategies embody assumptions that normalise research involving white interviewers and white respondents, and treat race or ethnicity as being the primary factor in interview interactions, eclipsing differences of gender, class, age, disability and sexuality. As a young black English woman, not only did my perceived race impact of the research but also age, gender and nationality. There is little reflection in methodological literature on the effect of a black researcher on interviews with white people; therefore there was little theoretical or methodological knowledge to draw on to guide the development of interviewing practices during my research. I can therefore only speculate on the impact of my perceived race on the interview process.

It would be naive to suggest my background had no impact, although I do not believe it detrimentally impacted on the research. I suspect that during interviews white officers

were more careful in how they addressed racial issues. During observations, I was asked frequently about my background and was surprised at how willing officers were to talk about race in relation to stop and search and at some of the joking or slang/inappropriate terminology that they used in front of me. In the US forces I visited I believe that nationality was a more significant identifier than race or ethnicity. Officers that had spoken to me previously on the telephone sometimes expressed surprise upon seeing me, as my appearance was not what they had expected given my broad London accent. Officers asked less about my racial or ethnic background and more about England and the experience of being English in America. In both countries, I found that I developed a slightly different rapport with black and Asian officers. There was a shared understanding of the experience of racism and when alone with officers, they often spoke about their experiences of racism within the force and the racist behaviour of other officers. During one observation shift in Greenville, I was asked to wait outside the briefing room for an extended period; this was unusual as the previous day I had sat through the briefing. A black female officer asked me if I would like to wait somewhere more comfortable. Once we were somewhere private, she explained that the previous night an officer had shot of a young black mentally-disabled boy, which they were discussing in the briefing. She went on to talk about some training they had done within the force about using firearms in dangerous situations that had shown that white officers were much more likely to shoot black suspects. She commented that the community would be outraged at the news of the shooting and that they had every right to be. During the following shift, the white officer that I was shadowing did not mention the shooting or reaction to it. During interviews I found that I was more challenging with black officers who gave ‘standard’ answers:

We never knew what racial profiling was until someone outside the Agency brought it up and I thought that was unfair. I am a black lieutenant and I thought it was unfair.

You have never been racially profiled?

Absolutely I have been stopped! (Laughs). Yes, I have been stopped on the basis of my colour, yes. But it hasn't happened to me in New Town. It has happened to me in Mississippi, it has happened to me in New Mexico, it has happened to me in Arizona, it has happened to me Los Angeles, and it has happened to me once here in New Town when I was younger. It has happened to me. (NT/C/LT/16)

As significant as my perceived race was my gender in a mainly male environment. Stanko (1998: 36) reports that throughout her research into various aspects of the criminal justice system she was constantly reminded of her gender, through 'cat calls and sexualised comments.' She argues that the special difficulties for female researchers on patrol including harassment are partly due to the way officers are 'welded' together due to the 'dangerous high crime area' (Stanko 1998: 38). In an earlier study, Hunt (1984) appears to have embraced the challenge of being a woman in a largely male environment. She notes that to establish trust with American police officers she 'had to negotiate a gender identity that combined elements of masculine trustworthiness with feminine honesty' (Hunt 1984: 286). My experience fell somewhere in between. During the fieldwork I found being a woman more beneficial than it was disadvantageous. Due to the gender relations and hierarchies in the police, it is likely that as a woman I was perceived as less threatening than a male researcher. The fact that I was a student and presented myself as keen to learn from officers reinforced the message of neutrality and harmlessness. I was careful to dress in a manner that minimised my sexuality. During group interactions there was often camaraderie that involved talk or jokes about sex, engaged in by both male and female officers. I participated in the camaraderie and found that this strategy was useful in building a rapport with both male and female officers. With individual officers there was humorous flirtation; this often helped to facilitate my research, often leading to intimate and light-hearted interactions. I was occasionally asked out for dinner or a drink but was able to light-heartedly turn down these advances. Some male officers adopted a protective, paternalistic attitude towards me, for example, apologising for other officers' use of bad

language, warning me about other officers or making sure that I got home safely after late night observations. Only on one occasion, did I suffer sexual harassment when physically propositioned by a senior officer in his fifties. I felt physically threatened and shaken and unlike Ackers (1993: 216), failed to ‘...avoid injury to male egos in order to remain good working relations and access.’ I had similar thoughts to Ackers who identifies feelings of ‘one of the most worrying aspects of this scenario, particularly when the researcher is working in total isolation, is the ease at which one developed a sense of immobilizing guilt. Did I give him the wrong impression? Could I have avoided the situation? Should I have challenged?’ (1993: 223). The incident happened towards the end of my time at the force and I was able to avoid the officer by cancelling two meetings at which he would be present, although this meant losing valuable follow-up data with senior officers.

It is extremely difficult to ascertain the impact that my presence had on the officers and situations that I was observing. Gold (1958) has observed that ‘participant observation’ is a master term which covers a continuum from complete observer to complete participant. I attempted to play the role of complete observer but during the fieldwork I moved up and down the continuum. During the observations I was occasionally asked or expected to be more of a participant than an observer. At one incident in Greenville, the officer I was observing was the first to arrive on the scene of an attempted car jacking where the victim had been shot several times in the thigh and was lying bleeding on the pavement. While the officer applied first aid and comforted the victim, I was asked to gather together the witnesses and ensure that evidence was not tampered with. I was often perceived by the public as a plain-clothes member of the police, especially in the areas where I was required to wear a stab proof vest or display ID with the police insignia on it. On some occasions officers introduced me as a researcher, while others allowed the people to go on thinking I

was an officer. On other occasions officers asked me to decide on a course of action; did I want them to stop and search a young man in front of us because I hadn't observed a stop and search that day or arrest a young woman for a traffic offence rather than issue a citation so I could see the jail and booking process? I always responded by asking the officers to act as they would do if I wasn't there. As Van Maanen (1978: 346) points out, short of wearing a sign 'there is no way for the field-worker to be sure that his research role in the organisation is in fact the role that the others are responding to.'

'Adherence to the principle of informed consent implies that two major conditions are met: first, that the research subjects are made aware of and understand the nature and purpose of the research; and second, that, from a position of knowledge, they can freely give their consent to participate in the research' (Norris 1993: 128). I attempted to be as open as possible about what I was investigating but also honest that it was early stages of the research and so I did not know exactly what I was looking for. Like Norris (1993) I adopted a 'standard explanatory patter,' that I offered officers at the beginning of interviews and observations along with guarantees of anonymity. It was unclear how much choice officers had in whether or not to participate in the research. Officers were not always given the opportunity to decline to participate. Senior officers directed them to participate and there was no opportunity or question of refusal. In other circumstances senior officers asked for volunteers and so officers were able to choose whether or not to participate. There were several interviews where it was clear officers did not want to participate and gave standard, monosyllabic answers. In these cases, I ended interviews as quickly as possible respecting the right of officers to refuse to participate. After one interview the officer explained:

It's nothing against you. We are just fed up of talking about stop and search. I do hope that you get everything you need for your course. (BPS D/PC 18)

I believe that the sergeants who coordinated the observations often assigned me to the more experienced or 'best' officers on a shift. However, I was able to observe probationers, less experienced officers and other officers (arguably less professional officers) when we were called as back up to a scene or went on group operations. The character that I projected during observations helped facilitate access. I was honest, engaged, interested and 'up for anything.' Crucial to being accepted is what Van Maanen (1982: 113 - 114) has called the 'balls test... only practical tests will demonstrate one's trustworthiness. Liking a person is no guarantee that one can also be trusted.' In some circumstances, I was aware that officers were 'testing' me, evaluating my reactions to certain comments and actions. I attempted to always remain neutral and not show surprise or condemnation when officers broke the rules or acted badly. As Manning notes 'observing the law involves, at times, not observing it' (quoted in Van Maanen 1982: 115). There were several occasions where I felt I passed the test. In Amberham, I was shadowing a group of officers participating in a special operation aimed at addressing armed criminality amongst gangs. The officers participating were from other areas and were clearly fearful undertaking foot patrol in what they perceived to be a volatile situation. Instead of staying in the van, as offered, I patrolled on foot with officers. Several commented that I had 'bottle' and appeared happier to talk to me during these periods. During the observation of a routine response shift in Greenville, the officer I was shadowing discovered a dead body. Although there turned out to be no suspicious circumstances, the man had been dead for two weeks and the sight and smell were nauseating. During interviews the following day and in subsequent weeks at different stations officers joked that they had heard about the incident and that I was "pretty cool" and "kept my breakfast down." This immediately lightened the interview atmosphere.

Most officers reacted positively to being observed; I provided a break from the usual routine or a new face to talk to. However, some were suspicious at first. In the UK, there was often confusion as to my identity and whether I was a Home Office researcher (as the Home Office had conducted research on stop and search in some of the stations prior to my visit). Officers often joked that I was from Internal Affairs or Performance Review to see how well they were doing their job. I therefore explained frequently where I was from and that the research was towards the completion of a PhD. Officers were often interested and asked questions about my personal life, history and experiences, which I was happy to answer. I was honest about my opinions even if opposing the traditional conservative police worldview and found officers accepting of this. In the two US forces I visited officers were familiar with observations or 'ride alongs' as they are called there. These forces have policies that allow citizens of the state to do one ride along per year in an area and time of their choice. The officers I observed estimated that they have an observer (usually citizens, journalists or cadets - students working for the police department) at least once a month. Hence officers were less conscious of my presence and less reserved in front of me than the English officers I observed. In the US, where they were usually single crewed and spend hours alone in the squad car, officers often commented that they were pleased of the company. It was under these circumstances that officers often 'poured out' their grievances and frustrations and personal problems at home or with their families. I believe as an outsider I was safe to engage with as I had no vested interest in the internal politics of the organisation. As a relative stranger it was easy for officers to talk about quite intimate family problems knowing they were unlikely to see me again. These informal interactions proved important for building familiarity and trust and gaining a greater understanding of the everyday thought processes of police officers. These times

also gave officers the opportunity to find out about me and to ask questions and expect answers. I was often able to develop a rapport with the officers I observed and many times they were happy to answer questions or give opinions in response to incidents we attended. These discussions were often frank and the responses were more open than in the semi-structured interviews I conducted.

There were undoubtedly themes and implicit assumptions that I overlooked or did not comprehend because of my outsider status. Despite these concerns and the effects of my presence, I was surprised at how unreserved officers were in front of me. As well as observing many examples of good practice and well managed incidents, I did witness officers make bad judgements, act outside of the law and treat the public badly. The observations allowed me very quickly to gain an understanding of the structure and organisation of the police forces I was working with and the context and environments in which police officers work. I was able to observe and engage with officers when they were in control of events, in vulnerable situations and when they were at 'ease' and to observe repeated interaction between the public and officers. Being able to observe group interactions during the course of normal duties or when officers were 'hanging around' during refreshment and meal breaks, around the station or when we were not on a call provided illuminating details about the social and hierarchical relationships within the forces I visited. The experiences and familiarity gained during the observations proved essential for re-structuring and conducting the subsequent interviews. Without the opportunity to observe officers at work and participate in the informal interactions in the station I would not have understood much of what was taking place and interviews would have been rendered superficial and possibly invalid.

An ethical dilemma

Spending time with police officers in a variety of circumstances often gave rise to a number of ethical dilemmas that ethical codes of research practice do not always cover. Prior to one of my first ride alongs in the US, officers insisted on teaching me how to hold and fire a rifle. Even though I could not imagine using it, the expectation that if the officer or I were in danger I would shoot the rifle made me uncomfortable and I was unsure of the boundaries of engagement as a researcher. During the research there was a small number of incidents where I believed officers used excessive force and conducted searches outside the law, either in their entirety or parts of the procedure. Many researchers have noted the difficulty of defining excessive force in the often chaotic situations police find themselves in (Westmarland 2001; Alpert and Dunham 2004). On two occasions, I was certain that I had seen officers use excessive force. During an observation shift with the gang unit in New Town, they were called to arrest a 17 year old Latino gang member on a warrant due to failure to attend court. As officers knocked on the door at the front, the boy attempted to leave by a window at the back, seeing the police in the back garden he then barricaded himself in his bedroom refusing to leave. Meanwhile, officers forced their way through the front door and aggressively handcuffed the boy's mother (who refused to cooperate), pinning her on the floor they used the treatment of the mother as a bargaining tool to talk the boy out. When he emerged, five officers quickly restrained the boy and put him in handcuffs but after he was restrained they continued to hit him. Afterwards an officer commented, that the boy 'had come out fighting and they had shown him.' On another occasion in New Town, the officer I was shadowing was called to a suspected fight in progress. When we arrived, another officer had a young man in handcuffs face down on the bonnet, he proceeded to bang the boys head against the bonnet while swearing and verbally abusing him. Other officers calmed the situation and released the boy who later

appeared to have nothing to do with the fight. Although there are professional codes of conduct for dealing with such incidents (ESRC 2003; Social Research Association 2003), as Norris (1993: 137) notes ‘the reality of doctoral field-work is that, more often than not, it is carried out by lone graduates distanced from their supervisors and unlikely to be integrated into an academic community.’ This was the situation that I found myself in, questioning whether I should report the incidents to senior officers at the expense of breaking the guarantees of confidentiality that I had given and jeopardising future access and acceptance. Punch (1986) claims that there are no hard and fast rules, and as each situation is different, it must be judged on its own merits. Similarly, Holdaway (1983) argued that he would know when acceptable limits had been crossed and that he would have to be able to live with this decision. On reflection, I decided to say nothing and showed no recognition to the officers that I was aware that I had observed anything outside the ordinary. Although this ensured my access continued, this left me feeling distressed and disgusted with myself that I had not taken a stronger moral stand.

I very much enjoyed the time I spent with officers. As Van Maanen (1982: 138) notes ‘fieldwork is an always emerging task... In the field itself, however, feelings are far more sharp and direct.’ At times I felt disgust at acts of physical brutality and rough treatment of people, and at other times pride when officers displayed great compassion in dealing with the misfortunes of others and restored order in the most chaotic situations. I came to like many of the officers I observed and am grateful for the insight into their experiences and views of the world that they granted me.

Analysis of the data

In many ways the analysis of the data began during the fieldwork and during the hours spent pain-stakingly transcribing the interviews and observation notes. During these times I began to note ideas, themes, phrases and patterns that emerged and form working hypotheses. Once I had transcribed all the data, I began a period of concentrated analysis. I had planned to use the qualitative data analysis programme Nvivo. But once I started the analysis I found it more constructive to work the old fashioned way - with print-outs of the interviews and observations and highlighter pens!

In order to manage such large amounts of data, I divided it up by force and then area. I focused on the broad sections developed in the interview schedules (see Appendix 4) to structure my analysis. I systematically worked through each transcribed interview and observation notes recording emerging ideas, connections and patterns and quotations and events that both supported and undermined the working hypotheses that I had developed. For example, during interviews I asked officers to provide an example of a recent stop and search that they had made, the motivation for that stop, how it was conducted and the outcome of that stop. During observations in the field I was often able to observe stops and then ask the officer to verbalise the factors that had contributed to the forming of suspicion or decision to conduct a stop. This provided me with a body of over 140 described or observed stops (of different types) that I divided into the following categories: appearance, behaviour, time and place, information/intelligence, and the stopping of known offenders. I was then able to analyse which categories of stop were used most frequently in an area, compare this to how officers described their use of stops in other parts of the interviews and the context in which the officers were working.

was an officer. On other occasions officers asked me to decide on a course of action; did I want them to stop and search a young man in front of us because I hadn't observed a stop and search that day or arrest a young woman for a traffic offence rather than issue a citation so I could see the jail and booking process? I always responded by asking the officers to act as they would do if I wasn't there. As Van Maanen (1978: 346) points out, short of wearing a sign 'there is no way for the field-worker to be sure that his research role in the organisation is in fact the role that the others are responding to.'

'Adherence to the principle of informed consent implies that two major conditions are met: first, that the research subjects are made aware of and understand the nature and purpose of the research; and second, that, from a position of knowledge, they can freely give their consent to participate in the research' (Norris 1993: 128). I attempted to be as open as possible about what I was investigating but also honest that it was early stages of the research and so I did not know exactly what I was looking for. Like Norris (1993) I adopted a 'standard explanatory patter,' that I offered officers at the beginning of interviews and observations along with guarantees of anonymity. It was unclear how much choice officers had in whether or not to participate in the research. Officers were not always given the opportunity to decline to participate. Senior officers directed them to participate and there was no opportunity or question of refusal. In other circumstances senior officers asked for volunteers and so officers were able to choose whether or not to participate. There were several interviews where it was clear officers did not want to participate and gave standard, monosyllabic answers. In these cases, I ended interviews as quickly as possible respecting the right of officers to refuse to participate. After one interview the officer explained:

It's nothing against you. We are just fed up of talking about stop and search. I do hope that you get everything you need for your course. (BPS/D PC/18)

ANALYSIS OF UK FINDINGS

6

Chapter 3 outlined the law with regards to stop and search, the introduction of PACE and the subsequent attempts at reform. This forms the national policy context in which police forces operate stop and search. National policy is mediated through a number of levels before it reaches front line officers. These include, the force context, which incorporates force policies, practices, traditions and initiatives and a local environment, encompassing area policies, practices, training, and personnel. This chapter will briefly review the national and force-wide policy contexts. It will then look at the local policy environment in Amberham Police Service, considering officers' use of stop and search in three areas. This chapter continues with a case study of a special operation that was observed in two of the areas during the study. The operation designed in response to a period of armed criminality included tough law enforcement on those suspected of being involved, and high visibility patrols aimed at reassuring the communities and building confidence in police actions. The discussion of the operation shows that the initiative departed from its articulated goals once it was mediated through the local policing environments and individual officers' practice.

Part II of this chapter looks at how the national policy agenda has been received in the second UK police force, Brookshire Police Service. The lack of observations and constrained research environment means that this force is treated as a minor case study. This chapter explores the themes that were highlighted in Amberham and considers other issues that arose in this area.

National policy context

The Macpherson Inquiry recognised the importance of stop and search in discussions on equality and policing. Yet Macpherson argued that the police powers to stop and search should remain unchanged. Instead, Macpherson recommended that all stops (as well as searches) under the existing legislation should be recorded, including the self-defined ethnicity of the person stopped. PACE was introduced in 1984. The accompanying Code of Practice A has been updated five times, most recently on 31st December 2005 to incorporate the administrative changes arising from the Macpherson recommendations. The national agenda has attempted to strengthen PACE by improving accountability by forbidding voluntary stops, providing greater guidance on reasonable suspicion and extending recording practices to cover stops. There have also been initiatives to improve the conduct of officers during stops and efforts to move towards 'intelligence-led' stop and search.

The primary purpose of the stop and search powers is to 'enable officers to allay or confirm suspicions about individuals without exercising their power of arrest' (Code, para. 1.4). The Code notes that reasonable suspicion must be based on the circumstances of each case; there must be an objective basis for that suspicion based on facts, information and/or current intelligence which are relevant. Reasonable suspicion cannot be based on race, ethnicity, age, appearance or generalisations or stereotypical images of certain groups of people as more likely to be involved in certain crimes. The Code notes that officers who detain someone based on reasonable suspicion should first question that person about their behaviour or the circumstances that gave rise to suspicion, if the questioning eliminates the

grounds for suspicion a search must not take place. In order to ensure the correct use of the powers the Code outlines what is expected of officers:

Front line officers

All stops must be carried out with courtesy, consideration and respect for the person involved and every effort must be taken to minimize any embarrassment.

Before conducting a search officers must take 'reasonable steps' to inform the subject of the search of the officers' name and station; the legal power that is being exercised; the purpose of the search; the grounds for the search; and of their individual rights.

Officers must make a record of any stop search unless there are 'exceptional circumstances' that make this wholly impractical. If not done at the time, a record should be made as soon as practicable. Where a record is made at the time a copy should be given immediately to the subject of the search and should always include a note of their self defined ethnic background, the purpose of the search, the grounds, the outcome and the identity of the officer involved.

Supervising officers

Must monitor the use of stop and search powers and should:

- consider whether there is any evidence that such powers are being exercised on the basis of stereotyped images or inappropriate generalisations;
- satisfy themselves that the practice of officers under their supervision in stopping, searching and recording is fully in accordance with PACE;
- examine whether the records reveal any trends or patterns which give cause for concern; take appropriate action where necessary.

Senior officers⁹

Must monitor the broader use of stop and search powers and, where necessary, take action at the relevant level.

Additional supervisory and monitoring requirements

Supervision and monitoring must be supported by the compilation of comprehensive statistical records of stops and searches at force, area and local level. Any apparent disproportionate use of the powers by particular officers or groups of officers or in relation to specific sections of the community should be identified and investigated.

In order to promote public confidence in the use of the powers, forces in consultation with police authorities must make arrangements for the records to be scrutinised by representatives of the community, and explain the use of the powers at a local level.

PACE Code of Practice A, 31st December 2005

⁹ Defined as those with area or force wide responsibilities.

Only under specific circumstances are police given the power to search without reasonable suspicion. Searches made under section 60 of the Criminal Justice and Public Order Act 1994¹⁰ or section 44 of the Terrorism Act 2000 require an authority but not reasonable suspicion. The powers granted under section 60 allow an inspector or higher ranked officer who reasonably fears disorder or serious violence or the carrying of weapons in a particular locality to authorise uniformed officers to search any person or vehicle in that locality for weapons for a period of 24 hours. Subsection 3 allows a superintendent to extend this authorisation for a further 24 hours. Authorisations must be made on the basis that exercising the power is a proportionate and necessary response to achieve the purpose for which the power was intended. The Home Office suggests that section 60s must be authorised based on intelligence or relevant information such as about violence between particular groups, previous incidents of violence at or connected to particular events or locations, a major increase in robberies at knife-point in a small area or reports that individuals are regularly carrying weapons in a particular area (Stop and Search Action Team (SSAT) 2005). The guidance also recommends that officers using the powers on the street should be given information on suspected offenders and conditions as to who should be stopped and searched on the street.

The national agenda coming out of the Macpherson Report emphasised a move towards ensuring that stop and search is intelligence-led. The Code recommends that:

[s]earches are more likely to be effective, legitimate and secure public confidence when reasonable suspicion is based on a range of factors. The overall use of these powers is more likely to be effective when up to date and accurate intelligence or information is communicated to officers and they are well-informed about local crime patterns (para. 2.5).

¹⁰ as amended by s.8 of the Knives Act 1997

The National Intelligence Model (NIM), which the government has placed at the centre of the Police Reform Agenda, should direct the police in how to use stop and search most effectively in response to identified problems (Stop and Search Action Team (SSAT) 2005). NIM represents an effort to promote effective intelligence-led policing on a national basis and to standardise intelligence-related structures, processes and practices across all police services (John and Maguire 2004). Stop and search should be based on detailed, accurate and up-to-date information that reflects the needs of officers. ‘In fact, intelligence is a prerequisite for using the power of stop and search’ (Stop and Search Action Team (SSAT) 2005: 39). In practice,

[o]nce a fortnight, throughout the country, all stakeholders (detectives, patrol staff, informant handlers and management) sit down and look at the crime picture. It analyses the crimes of the last two weeks, looking for similar *modus operandi*, and comparing this to current intelligence, supported by knowledge of past offenders. From this participants try to predict possible hotspots and allocate resources on the basis of *core crime profiles*. Individuals or locations will be targeted on the basis of intelligence... A person will be searched either because there is specific intelligence about them as an individual, or because they are behaving suspiciously in a location identified by intelligence as a hotspot for drugs or crime (Keenan 2005: 85)

To accompany these changes, a standardised training package was developed by Centrex (Central Police Training and Development Authority) that outlined the changes and attempted to provide practical scenarios for officers to illustrating when reasonable suspicion was present. The training also focused on how people should be treated during stop and searches and introduced the mnemonic GO-WISELY to remind officers of the information they need to give to a person during a search:

GO-WISELY

Grounds for search
Object/purpose of search
Warrant card (if in plain clothes or requested)
Identity of officer
Station to which attached
Entitlement to a copy of the stop and search record
Legal power used
You are detained for the purpose of a search

Source: Centrex (2002) 'Stops and searches: Constables' pre-read,' Centrex

The overall aim of the changes was to ensure that stop and search is used fairly and as effectively as possible to prevent and detect crime, to increase black and ethnic minority communities' confidence in the way the police use the power and to reduce its disproportionate use against them (Stop and Search Action Team (SSAT) 2005).

Part I: Amberham Police Service

Amberham Police Service policy directs all officers to follow PACE. A force order abolished voluntary stops within the force applicable from July 2001. The order noted: 'there is no such thing as a voluntary search. The mere presence of a police officer making a request is recognisable as a form of compulsion in itself. 'Voluntary' or 'Consent' searches will no longer be acceptable' (Amberham Force Order 2001).

The data shows considerable differences in the way stop and search is used throughout Amberham. The national and force policy is applicable to all areas, but the area – the local environment, working practices and personalities - all impact on how the national policies are interpreted.

A. Area A

Area A is in south Amberham and is the third biggest area in the force. The area is mainly residential; but includes two major industrial areas. It houses a university as well as two large hospitals. The area is predominantly white, with the exception of student areas and an increasing number of asylum seekers and refugees that have been housed in this area.

The strategic crime targets identified by senior officers are street robbery, domestic burglary and violent crime. Officers indicate that the major crime problems for the area are vehicle crime (both theft of and from), domestic violence, burglary and drugs (heroin and crack cocaine problem). The student areas suffer from high rates of burglary. There was a growing awareness and mention of anti-social behaviour but several officers expressed the concern that they were often called to disperse groups of kids that were doing nothing other than 'hanging around.'

Area A was one of six basic command areas nationwide piloting Macpherson recommendation 61, that all stops be recorded. The pilot began in April 2003 and had been running for four months at the time of the research. Officers were required to record all 'encounters' with the public on a form that included the individual's name, address, self-defined ethnicity, reason for the stop and action taken. A copy of the form was to be given to the individual stopped; the original is given to the shift sergeant to check and then the details are input onto a stop and search database. 'Encounter recording,' was defined by one senior officer as 'asking an individual to account for their actions or presence.' All officers have received a training package reviewing PACE and giving guidance on how to use the new forms.

The senior officer in charge of implementing the encounter recording pilot identified the aims of the requirements as building community trust and confidence by increasing the transparency around actual stop and search use:

The biggest thrust is about community confidence and there is the perception that was aired in the Lawrence Inquiry that the Police Service was abusing its stop and search powers and particularly abusing them towards visible ethnic minorities. And there was this perception that young, African-Caribbean lads, were being routinely harassed by the police because they were all street robbers in the police's eyes. And lots of the searches and lots of the stops that were being carried out were verging on the unlawful anyway because we hadn't got sufficient grounds to justify a lawful search. So youngsters were being encouraged to volunteer to be searched, which is a very difficult thing to volunteer for anyway, and the perception was that it was an abuse of police powers. And the feeling behind the encounter recording is that if you do away with all this voluntary search malarkey, it records all the police activity then we will get a truer picture of what is going on and couple that with better training and awareness of the diversity issues then that sort of harassment shouldn't be evident anymore. And if it is evident we should be able to see clearly who it is, where it is, why it is and do something about it. (APS/A/DCI/1)

It was also expected that recording all stops would help to reduce the disparity, although the detective chief inspector expressed scepticism that it would achieve this stated aim:

I think it is hoped that the 8x figure will go down. I am not entirely certain it will. And that is because of... the 8x figure comes very much from residential population figures and I don't think it is a fair comparison. (APS/A/DCI/1)

Within the force it was hoped that, as well as increasing accountability, recording stops could also be used as a measure of officer productivity:

What we are trying to do is identify what a productive officer does, in terms of how many people will a productive police officer arrest a year? How many people will they report for motoring offences? How many people will they stop and search? There is an expectation that where we can everybody will raise their game to that of the average officer. It may simply be that they are ignorant of their powers, don't know when they can and can't use their powers, or we have got somebody who is being lazy, so in which case it gives us a management tool to start to address peoples' performance. It is always dangerous when you start to put figures around these things, people do see it as a quota and it is interesting that it is being reported as a quota because the last thing that we want as managers is "I haven't got my X number of stops this week, this month, this year" so we go out and pick on the first people we see coming round the corner without any justification or grounds just to make up a quota. It is only really with stop and search that it is possible because in terms of number of people that are arrested you can't just arrest people, you do

need to have some evidence otherwise the custody officer does start to get a little bit cross. But it is a contentious issue. It is not about trying to create a league table or anything like that, it is entirely about trying to raise the standard of lower performing officers up to that of the average. (APS/A/DCI/1)

The reaction to the pilot from front-line officers was mixed, ranging from generally supportive to hostile. Despite efforts to the contrary, a number of front line officers mentioned that they had been set a quota of how many stops they were expected to conduct per shift and expressed feeling pressure to meet this. The requirement to record stops was introduced at the same time as the abolition of voluntary searches and the issue was clearly linked in officers' minds. Much of the criticism of the new recording requirement was focused on the increased bureaucratic burden of having to record all stops:

Doing a lot less stops than we used to. The new recording means that you lose intelligence. It takes time to fill-in the forms and people don't like giving their details. We used to get loads from it. But they have taken away the power to voluntary search – we used to find drugs, weapons – now that we can't do it we lose all that stuff. Nowadays, you start talking to people and they go to empty their pockets and you have to tell them that we are not doing that anymore, mate. With the old voluntary searches you could talk to anyone and get them to empty their pockets. The majority of the time people could say "fair cop" and just empty their pockets and hand over the drugs or whatever they were carrying. They didn't know the law. Now it's not practical – it is just a paperwork exercise, like we haven't got enough, if you just have to fill it in every time you ask someone where they are off to. (APS/A/OBS/2)

Don't see why I have to record it as long as a person understands. Every time I even stop and speak to someone I have to write it down. I see it as a waste of time. If people want a copy more than happy, but if people don't – don't see why I should fill it in really. I joined the police to detect crime not to fill in paper work. (APS/A/PC/5).

By contrast, other officers spoke positively about the requirement re-energising officers around their use of stop and search:

I think that there has been a lot of training done with this form and it has re-empowered people. You know, it is all right to go and stop and search. I think for a while people were really put off from doing it because they thought that it might lead to allegations made against them. People thought, "well, in that case – I'm not stopping and searching anyone, if it is going to be held against me, if I am going to have complaints about me, suspended..." and all this stuff. So on this

area, bringing out this new form, re-training everyone, re-empowering people with what their powers are, why they are doing it, what it is about, I think has been a benefit on this area. (APS/A/SGT/8)

But it does protect us more, we now have clear ground rules – they weren't so clear before. Before we wouldn't worry so much about having clear grounds. I'm happier about using it now. (APS/A/OBS/2)

Officers also noted the benefit of stops forms as an intelligence tool:

Post April, there has been a massive increase in recorded stop and search and significant increase in those arrested. It is true that we are getting more information than ever before. By giving more information to the public – we are getting more back. Simply, through the process of completing the encounter form. More information about motorists and who they are with and what's in the cars. More information about who is out on the streets. This was not something envisioned by the Lawrence Inquiry – but if you see something inside a car or someone on a specific street and document it – later on if there is a burglar nearby you have someone to start looking at. (APS/A/OBS/1)

There was some evidence that the requirements were failing in their object of increasing accountability. Supervisors did not mention the forms as a management tool and officers' efforts to meet perceived targets or quotas may lead to unnecessary and arbitrary stops.

Others were finding ways to circumvent the recording requirement:

I could predict that the amount of encounters is just as high as it was 10 years ago – but what we record is lower. Some officers are reluctant to waste their time completing the forms. We are still speaking to as many people but not recording as much as we were even two years ago. There is a lot of pressure to meet targets. (APS/A/PC/5)

It's not when you stop and speak to them, because that was what everyone was worried about at the beginning. We thought we would have to fill one out for every person we stopped but now I don't ask them to account for their position – I'll talk to them and I might make an intelligence log but I won't ask them to account for where they are and what they are doing. (APS/A/PC/10).

There was also a concern that far from improving community relations, recording all stops could formalise encounters and result in simple encounters becoming unnecessarily inflamed.

Senior officers described the aims of the encounter recording pilot as to improve accountability and transparency, increase productivity, build community trust and confidence and to reduce the ethnic disparity in stop and search figures. Yet in practice the pilot was failing to meet these aims. Accountability is not improved as officers are finding ways to circumvent the recording requirement and senior officers failed to view the stop forms as the supervisory tool. It is likely that productivity will not be improved as officers described feeling a pressure to meet quotas, which increases the likelihood of arbitrary, unsuccessful stops. In addition, officers had noted that increased recording could have intelligence benefits, which are explored further below.

General stop and search use

The main use of stop and search in area A is under section 1 of PACE; section 60 of PACE is rarely used. Senior officers described the use of stop and search in area A as predominantly in response to street crime and domestic burglaries. There is a growing encouragement to use stop and search as a way of identifying youths participating in anti-social behaviour as the records from stops could be used to apply for anti-social behaviour orders. There was also emphasis placed on the deterrence value of stop and search and the reassurance given to the community of seeing officers in an area.

[Y]ou have got to be realistic and accept the fact that very few people go dressed as the burglar. There are very few people who carry the tools of the trade with them because for the majority of offences that are committed on the streets you don't need a weapon, you don't need any sort of tools and inevitably the person who you have challenged might literally have been about to commit a burglary, robbery or something and you have stopped them, spoken to them, found out who they are and where they are going that sort of thing. You may have searched them, you may have had sufficient grounds to search them but what you haven't done is arrested them because you have no evidence to arrest them. You may have deterred an offence but we will never know because what you can't do is go back and say "if the police hadn't have spoken to you, do you think you would have done something wrong?" I think the answer might always be "no!" But what you don't know is the value of that deterrence, which is just as important. And communities see stop and search taking place and that acts as a deterrent to other offenders, maybe the high

visibility in its own right with police officers stopping and speaking to people deters people who have been stopped and spoken to and it reassures people who were otherwise thinking its not safe round here, they may think its not so bad here, there are police officers around I feel a bit safer. It is one to always bear in mind that reassurance is always important. (APS/A/DCI/1)

This is a tautological justification – the person might be about to commit a crime so the stop is justifiable – viewed in this way every stop is justifiable regardless of reasonable suspicion. During interviews officers were asked to give a recent example of a stop and probed further about factors that they found suspicious. During observations they were asked to explain why they had made observed stops. FitzGerald (1999) makes the distinction between ‘low discretion’ stop and searches – those that are conducted on the basis of information given to officers from sources - rather than proactive ‘high discretion’ searches, based on more speculative grounds and aimed at disrupting individuals’ activities or gaining intelligence. The explanations provided by officers can be coded further into the following categories: appearance, behaviour, time and place, information/intelligence, and the stopping of known offenders. It is important to note that these categories create a false distinction as officers often use more than one factor when explaining motivation for stops. Officers provided a staggering range of different uses for stop and search. This illustrates the wide discretion officers have and the lack of policy directing officers’ use of stop and search within this area. The typical answers were going equipped, robbery and offensive weapons – the type of crimes where officers may be able to find prohibited articles or tools for burglary on a person they stop and search. But once officers gave examples of their stop and search use or explained why they had made an observed stop, these crimes didn’t feature so often.

Officers were most likely to give an example of a stop they had made based on a crime report or intelligence. This was usually a report of a domestic burglary, street robbery or

theft from vehicles, but other examples included calls reporting a youth seen with a knife or someone acting suspiciously. These would fall into the category of low-discretion stops.

There was a sense that doing a stop or stop/search based on a crime report or call from the public is a 'safe' stop, where officers knew the grounds were in place and their judgement wouldn't be questioned:

I only really use it myself when a report comes in and we go out doing area searches. I would use it then but on general patrol it is hard to find the grounds to stop and search. Well, not stop someone – you could stop anyone and talk to them and fill in an encounter form, but to actually find the grounds to search them is hard. (APS/A/PC/7)

One officer described his most recent stop and search:

*Take a scenario I have just had on *** Road. Someone phoned up saying they saw a group of lads with a small knife. The description had said that they had seen someone slipping a knife into their pocket. I approached the lads, had a bit of a laugh and a joke with them, explained why I was there, been perfectly straight with them, gone through why I am searching them, what I am looking for or not looking for, where I am from and gave them a copy at the end. Just searched the member of the group that fitted the description. Nothing found. So explained to them that no further action and to be careful because apparently there was someone around with a knife. (APS/A/PC/4)*

This illustrates the poor quality of what is often deemed 'intelligence;' in practice it can be as vague as 'someone acting suspiciously.' Officers would often describe these stops as 'intelligence-led' stops and searches.

A lot of it would be intelligence-led... It might be a phone call from a resident saying there is a male in the street with a baseball cap on and other certain types of clothing who is acting suspiciously. So you might drive down, it might be not the person that they have necessarily reported, but if you see obviously a male with a baseball cap on and similar types of clothing then obviously you have got your grounds then with which to stop and search them. (APS/A/PC/5)

There was an ambiguity about what was meant by 'intelligence-led.' Officers often describe vague descriptions of 'suspicious' people or incidents as intelligence, as opposed to detailed knowledge of crime patterns in an area or concrete information about

individuals involved in crime in a specific location. Officers described situations where they had stopped somebody on the basis that they had not seen them before in an area or that they were a known offender. Thus what is being defined as ‘intelligence-led’ stops was actually stops made on the basis of the intelligence that they might produce.

*Don't do many sIs [PACE section 1 searches] - just stops for information.
(APS/A/OBS/2)*

I try and get at least a few encounters in because obviously that's where all our intelligence comes from. It doesn't take much – you can stop and talk to anyone, I mean they are not obliged to give their name and details... Definitely the encounter records are good at getting a lot of intelligence- names, areas that people are frequenting, obviously who they are frequenting those areas with. (APS/A/PC/5)

There was little consistency displayed about what type of intelligence it was hoped would be gained from stops. Officers would describe gaining intelligence as knowing that a person was at a location at a certain time. Although this may help those individual officers with policing their area, there was little evidence that the information officers gained from stops was fed into an intelligence system or that intelligence played a systematic role in structuring officers’ stop and search.

Most stop and search use is ‘high-discretion,’ where in many cases it is questionable whether there is reasonable suspicion present. In area A the most common factor leading to a stop was officers’ observing behaviour that they perceive as suspicious and using the stop to allay or confirm those suspicions. A typical example is:

The last stop and search was a couple of lads that we had seen from the car in an area where there has been a problem with graffiti and we saw them and then they had gone and then we saw graffiti on the wall. We were both fairly certain that we had seen them. But you know what it is like you are driving along and you are not sure if you have seen it or not. But when we stopped them we could smell spray paint – so then my colleague, he searched them because they were both males, and found a can. It probably took five minutes in total, we found the can and they were arrested. (APS/A/PC/9).

Officers still refer to a ‘gut-feeling’ or intuition about certain behaviours or people. Some recognised that this type of suspicion had to be backed up with other grounds; some didn’t.

Sometimes it’s just a gut feeling. You may have stopped that person before and he may be known to the police. I think it is just the way they are behaving sometimes. Sometimes you might get someone walking down the street and you know they are going in a particular direction but the minute they see you walking their way they might suddenly take a detour and it is really obvious that they are trying to avoid you. So you go and talk to them and find out why they have taken that detour. (APS/A/PC/5).

Officer 1: *[The] other types of vehicle stops we do – we are travelling along and we see a car coming in the opposite direction and we virtually say to each other – “that is moody.” A slang word, expression we use “that is moody.” Swing the car round and we are stopping that vehicle for a purpose because we feel there is a criminal element in that car. Just by our intuitions. We are suspicious people at the end of the day; we got to be to do the job.*

Officer 2: *If we didn’t have a suspicious nature – we could just walk by people in the street doing things. If you haven’t got a suspicious nature – you shouldn’t be doing the job at the end of the day. (APS/A/PC/2)*

Many of the examples of the stops given involved the stopping of ‘known offenders.’

Officers’ suspicion was driven by the fact that they had had previous interactions with individuals; and it was often unclear if there was objective suspicion based on the circumstances at the time for making these stops. Having previous contact with someone was frequently given as a reason for making stops but there was some awareness that this may not be enough for a stop and search:

If it is a stop and search - suspicion is not enough. You have got to know that they have been in an area where a crime has happened or you have got to have seen them do something suspicious or enough to stop someone and search them. “He’s a burglar and he’s outside a house and I think he is going to burgle it” is not enough to spin him round and search him for everything. A known criminal in an area – you might want to have a word with him but you are not going to search him. But you are still going to have to fill out the form. (APS/A/PC/10)

Stops on known offenders do not appear to be based on allaying suspicion but instead to ‘keep them on their toes’ and reassure the general public. It is interesting that reassurance

and high visibility policing is explicitly linked to stop and search rather than other methods of engaging with the public. This was confirmed by a sergeant:

The people who are being stopped and searched, I mean, you will stop and search the kids and they will say "I don't want to be stopped and searched again" and they will pull out three or four stop and search forms but then you know that kid is in and out of court, in and out of the custody block – an active criminal. And for that kind of person you are almost ensuring that they are not in the position to be carrying, not so much weapons around, but tools around for going equipped. I think we quite effectively target our criminals. We just don't go out on the street and stop every tenth person and see what we can find on them- we don't do that. (APS/A/SGT/3).

Many of the examples given during interviews and observations have to do with groups of youths hanging around. The senior officers were keen to talk about anti-social behaviour (just beginning to become a government buzzword at this point) and had identified encounter recording as a possible way of recording the movements of problem youths to support the obtaining of anti-social behaviour orders. This term hadn't filtered down to officers but they were commonly using stops and stop and searches to disperse or control groups of youths. This was sometimes as a result of community pressure or calls from the public to do so. One sergeant describes this as 'yob shopping':

It's always on a late and it was be used for 'yob-shopping,' kids playing up and whatever. The van will draw up "lads, do you mind" (and it is always lads) "lads, do you mind coming over here and having a chat. We have had complaints... Do your parents know you are out? What's your name?" And it's done in that way and then the encounter forms are filled out. Perhaps it would be in the recreation area, hanging around on certain street corners, or where there is an off-licence and that's come from the public and they have walked past and they have been spat at or they have had abuse shouted at them. So the job comes over and that's when... technically there is not an offence its just – we call it yobs 'yobbing' basically but giving them a stop and search means that we now know who they are, so if you want to do more than what you are doing – you know that we know and lets see if you want to play this game. I must say it does seem to have an impact the fact that the police have got all their details and they know who they are, so if someone does go and graffiti their name somewhere – the police are going to know who that person is and where they live. (APS/A/SGT/8).

Thus the stop forms are in practice criminalising non-criminal activity.

A further category of stops are based on appearance. Officers distinguish between the types of people that they target and those they do not. A typical example is:

I mean you have got your, how can I word this, your decent folk if you like, your workers in the area, and then you have got your druggies, the people who are on the dole, collecting social and things like that. (APS/A/PC/5)

Officers described knowing how to distinguish between these groups through experience and ‘knowing who is doing the crime:’

After 22 years of service, we tend to know who [are] potential crooks. (APS/A/PC/2)

I suppose – young men tend to jump out at you. Then there seems to be a fashion, our criminals - I don't know what it is - all wear Rockport boots and tracksuits. So if you are a young man and you have got them on there is a good sure sign that you are going to be stopped and spoken to. Not necessarily stop/searching... because there is a big difference now between stopping and stopping and searching. As I said, more officers are stopping and fewer officers are stopping and searching. So that is a factor. (APS/A/SGT/3).

Because you know that is what you are looking at, you have intelligence or research to say who is your typical offender and that has changed. In the city centre, my typical offender would be a young black male wearing a hooded top/sweatshirt and perhaps a gold tooth and Nike trainers that seemed to be to me my description of a robber. I have come here and it is completely different. The typical would be two or three white youths, gaunt, spotty and that is the group of offender here. (APS/A/SGT/8).

An area that combines observation of behaviour and appearance is drugs. There was some ambiguity about the use of stop and search to target drugs in this area. Stopping and searching people on suspicion of possession of cannabis is frequently mentioned in this policing area and others. Previous studies have mentioned possession of cannabis as one of the main offences picked up by stop and search and raised the concern that young people are being criminalised as a result (FitzGerald 1999; Waddington, Stenson et al. 2004). The national figures show high use of drug searches and a disproportionate number of stop and searches on black people for suspicion of drug offences. Yet apart from cannabis (which

officers usually smell), stop and search doesn't seem to be able to legally detect other types of drugs:

Drugs is untouchable, isn't it? Where do you get your power from to do a drugs search? No, if you know they have just done a deal I suppose you have got the power, if you know a deal has just taken place and you want to search them then yeah but you have got to bring them back to the police station. (APS/A/PC/10)

I think that with the drugs – a lot of the kids now will pull out cannabis because they either think that it is now legal or there is a bit of complacency within the police over a bit of personal use. So the kids will pull that out. But if you get, say, the dealer who has 20 bags of heroin on him, he knows that he has only basically got to have it in his pants or whatever and he is not going to get hassled, he is not going to get searched by the police. And unless there is external information to back up a search of that person, if we said on a whim “we are going to search you” – it would be an unlawful search, it wouldn't be admissible in evidence... The officers should be arresting every person that is found in possession of cannabis. Whether they do or not is debatable. Because you know I don't know what percentage of the population that uses cannabis now but it is fairly high and I think a little bit of personal is often dropped. I don't know – it flies away in the wind (laughs)! Obviously, I don't know that for a fact and I don't know any officers who do that! (APS/A/SGT/3).

Officers noted a lack of clarity around the lowering of the classification of cannabis displayed by the public, which may influence stop and search rates.

Section 60

Section 60s are not frequently used in Area A. Officers gave similar examples of dated uses of section 60s in the area; these revolved around specific crime problems such as muggings on the buses, youths fighting with weapons in specific areas or robberies in a local entertainment park. Although section 60s are supposed to be authorised when there is ‘threat of violence’ for officers they seem to provide a chance to ‘keep people on their toes’ and reassure everyone else:

I know that section 60 is to combat weapons and the likelihood of violence and bits and pieces and I think that every time we have done it we have arrested someone – whether it is for weapons I am not sure. You can only use a section 60 to prevent violence. You can't really use a section 60 to prevent burglaries; it can only be for violent offences say robberies or car jacking. As we have done it in the past, as the

*buses pull up say, the police officer gets on the bus and identifies someone they think could be a likely target –which is a young male sat at the back of the bus – is likely to be a victim but also an offender. Sort of the offender profiling. You get them – so they have no warning you are coming, take them out, search them – you might not get a weapon off them then but they are then kept on their toes a bit because they never know if the next time that bus pulls up at a bus stop whether the same situation is going to happen again. I think that we are quite good at working out who our offenders are. I think, when I have done it in the past we have offenders that I know come up to us in ***, when we have had a force wide section 60, and they have been stopped up in town and then we have stopped them. So we know who they are but they are saying “I have already been stopped,” which means that the guys up in say the city centre areas, are also being able to say – “we don't know this bloke but we know that he looks like the kind of guy that commits a robbery” and when he comes to us we are saying “we know you are a robber and we are going to search you as well.” So it kind of almost supports the idea that as police officers we know who is committing crime or we know the kind of person who is committing crime. (APS/A/SGT/3)*

There was a clear nostalgia around the use of section 60s. Many officers commented on how much they ‘enjoyed’ section 60s because of the lack of restrictions in whom they can stop and so ‘they always get lots of prisoners’.

I enjoy s60s – they feel like we are being given the power back to do our job – but then it gets taken away again. (APS/A/OBS/1)

Although the section 60 power is rarely used in area A, officers’ reflections on it reemphasise the issues noted in relation to section 1 stop and search. Senior officers provide a tautological explanation for stops based on them justified by their deterrent effect. This has filtered down to officers at ground level and is then translated into the stopping of known offenders and gangs of youths – which officers then describe as having a deterrence and reassurance impact.

B. Area B

Area B is an inner-city area in Amberham. It is a diverse area that has had a history of police-community tension. The area has two crime fighting teams that had been in existence for three years paid for by a government initiative to work on long term issues

and crime reduction strategies. The area commander describes the area and specific crime problems:

The area is divided into three sectors; one sector is the relatively quiet part of the area, owner-occupied, suburban area with suburban issues really. The main problems they face are burglary dwelling houses although those have gone right down, burglary sheds, thefts from vehicles.

The rest of it is inner city Amberham, high levels of deprivation, high levels of unemployed, a fairly interesting racial and cultural mix. We have got all the waves of immigration, since immigration started in the 60s. The latest being the Eastern European, the Afghans and the Kurds. The multi-racial and cultural mix round here is good and in the main everyone tends to get along very well together. We are the street robbery capital of Amberham. We have more street robberies on this area than anywhere else. Its all over, it is very opportunistic, you get little pockets of street robbery occurring depending on whose around, whose about and what the opportunities are. We are down to about two a day. We have reduced our robbery figures quite considerably over the last five years or so. Burglary dwelling is also an issue, again opportunistic crime, easy pickings. We have a lot of drug addicts in the area, people on heroin who will steal what they can when the opportunity presents. We have one of the lowest rates of auto crime in Amberham, which is surprising for an inner city area. Because it is inner city, because it is deprived and because of the make-up of the problems we get, we get a lot of domestic violence, a lot of the calls we get associated with people aren't really well mentally and cause problems with the local shop-keepers and that sort of thing. Quite a lot of petty violence we have to contend with, people fall out with each other for no particular reason. On top of the crime patterns are guns and drugs. (APS/B/CSI/11)

Senior officers displayed an awareness of the problematic nature of stop and search in general but noted that it is used cautiously in area B and so doesn't cause a problem:

It's never been an issue round here. There has always been political debate about the use of stop and search but we use it very very sparingly. They talk about it creates tension between the Black community and the police – no it doesn't. (APS/B/CSI/11)

Most officers described using stop and search very sparingly; the answers ranged from 'last one was a month ago' to 'once or twice a week'. Officers from crime fighting teams appear to conduct more stops and stops and searches than general duty officers. The exception is searches under the Misuse of Drugs Act 1971 that appeared to be more frequent in this area. The officers interviewed in Area B all belonged to local crime

fighting teams, hence their use of stop and searches under section 1 tended to be proactive high discretion stops rather than the perceived crime report driven stop and searches described in area A. Most of the stops were driven by observation of drug activity. Again, most searches were conducted on suspicion of cannabis possession. The grounds for suspicion were developed by smell and observation of drug paraphernalia and certain behaviours. But again, officers described using 'gut feelings' and suspicion based on appearance for making a stop. There was an awareness that this doesn't constitute reasonable grounds and so officers then go on to describe more concrete grounds for progressing to a stop and search:

Obviously we are very good at spotting drug paraphernalia in cars or on people. If someone is walking down the road carrying a tube of baking foil, along with other circumstances, perhaps seen making a phone call, the chances are they are a heroin user. And you tend not to be wrong about these things because you just get to know. Foil is used for chasing the dragon basically, you heat the heroin with a cigarette lighter under the foil and you chase the bubbles it creates, you have to try and inhale the bubbles. So you stop a car and there is a group of lads in there and there is a big 15-metre roll of baking foil, the chances are they are not about to do a roast turkey. Seriously though, section 1 I don't use it often, it depends on the circumstances but Misuse of Drugs Act is used quite a lot or section 60. Its for class A, crack cocaine is the big problem, cannabis is... people still take cannabis, it is still not legal despite what everybody says. (APS/B/PC/14).

*What we will do is we will see what type of people are committing various crimes, we will know I suppose just by looking at someone, you get a lot of drug users coming from far a field, we have had someone from as far as *** coming up here to get drugs, and they will normally come in an oldest looking car and they will be... I'm not trying to be prejudiced but they are usually white people in a predominantly black area and they stand out. They will be in and out of the car trying to use phone boxes to get their drugs. They usually meet up on one of our main roads. There will be a group of them and they will look like typical heroin users basically, they will be very thin, their face will be red and spotty and they generally look unhealthy. It will give you the suspicion what do they need to come to the area for? That's probably a typical stop that we do. You get a gut-feeling that something is not quite right and then you want to go and speak to that person, but other than that I wouldn't say that that's a good enough excuse to go and search somebody just the fact that you don't like the look of them or think they might be up to something. I think you need a couple of factors – time of day and their actions, who they are speaking to. (APS/B/PC/13)*

Officers in this area noted repeatedly the importance of speaking to people in a respectful manner:

***Sergeant:** It is down to the individual officer's communication skills, if you explain to people why you are doing it, which you should do. Not just the "I am doing a section 60 because..." but use communication and put people at ease and be sensitive to their needs, then it is fine. But the problems come when you get people who are either nervous about using their powers or they are not confident or whatever – they come over wrong and it can get people rubbed up the wrong way.*

***Officer 2:** A lot of it is getting to know the area, going out walking and meeting people and learning from them. I come from one particular background and if I impose my way over somebody else from a different background it may not come across. Different peoples' personas, different ways of speaking and attitude towards you, they might be very direct with you, but they are not being hostile- it is just the way that they are. It's being out there, listening to how people speak and you do get street wise to it. You make your own little spiel, your own way of being with people. (APS/B/SGT/17)*

The main use of stop and search in area B is under the section 60 power.

Formally, I suppose it is mainly section 60s, but officers will use their own stop and search powers when they are out and about on patrol. (APS/B/CSI/11)

Most officers mentioned the frequent use of section 60 in the area and many of the spontaneous examples that were given were of stop and searches conducted under this power. There was some acknowledgement that such widespread use of section 60s were problematic and so they were being reduced:

We have lots of s60s in this area. As a force we are always in the top five for burglary. We also have large numbers of firearms incidents, a criminal gun culture – so we can get the authorisation and set up s60s quite easily. We have been running a special operation for a few weeks. We didn't want to have a blanket s60, so instead introduced stop and talk. Crime has reduced to acceptable levels; it is about talking not searching. We were also responding to the public who were asking us to reduce the numbers of s60 used. The police see it as their responsibility to stop and search but innocent members of the public ask why we are stopping them. Being seen to do something reinforces the intelligence-led policy. We want stop and search conducted on particular people. (APS/B/SGT/17)

The same nostalgia was not displayed around section 60 that was displayed in area A, perhaps because they take place so frequently. Section 60s were authorised in response to

armed criminality, street robbery and drugs. The overall impression was that section 60s were effective in terms of bringing down the crime rate and acting as a deterrent:

We probably use it every couple of days and the crime fighting teams make good use of that. I think it is very effective. It is a tool that enables officers to stop and search everybody in a given area and although it does perhaps sweep in some people who are perhaps innocent but we do also bring in a lot of people who are carrying weapons and drugs. It is a deterrent to those that do want to carry weapons, we tend to use it more with local officers who know the local offenders and have a good knowledge of where the crime is happening and who is committing those crimes and descriptions of offenders. So we do make good use of it but it is targeted, linked into intelligence that we have got on offences that are being committed. (APS/B/I/16)

Again, officers view section 60s as a deterrent, “keeping an eye on people,” and as a way of gathering intelligence and a more general reassurance mechanism:

[W]e are using it a lot. It's very useful because I think the community need to see us stopping people. And often feel reassured that we are not just letting people walk on by looking suspicious or go out and continue to rob somebody. We also need to stay on top of the people who are robbing. We get in articles that have been used for robberies, or clothing and that sort of stuff, clothing that we are looking for that a particular offender is wearing, we see them in that clothing and stop them, if they match the description of an offender then they can be arrested so we do get some good results out of it. It definitely brings the crime rate down. If we can get the person arrested and obviously dealt with by the courts and then I think that is taking someone off the streets with a potential to rob so it's valuable.

When you are doing a section 60, who do you decide to stop and search?

I would say being in the area you have a knowledge of the type of people who commit these crimes, what they look like, who they hang around with, you probably know the person – so it gives you the power to stop and search the person. To stamp a bit of authority. To let them know that you are out watching them basically and we are not going to turn a blind eye and if we are going to see them in the street we need to stop and search them. (APS/B/PC/14)

This again displays the confusion over intelligence; the inspector refers to intelligence based on information on specific offences being committed but officers using section 60 on the streets provide a wide range of non-specific information as explanation for their stops. There is less use of discretionary section 1 stop and search powers in area B. The high use of section 60 powers in this area means that in practice the discretion is exercised by local area commanders in determining upon which areas to impose section 60s. This relieves the

individual officer of the need to develop reasonable suspicion in accordance with PACE.

Thus it is likely that stops are made on the basis of stereotypes and generalisations.

C. Area C

Area C borders area B and in many respects shares a similar demographic make-up and crime problems. Although it has also had a similar history of antagonistic police-community relations, the area does not have the same symbolic significance as Area B.

The area commander describes the ethnic make-up of the area:

*It's about 20,000 – that is the last Census. I think we have probably grown a bit but it is going to be very hard because it's a very fluid population. We have a high concentration of asylum seekers. We are looking at some parts of the area – 60% visible ethnic minority population, very high concentration of Pakistani and Bangladeshi. A small but significant black population in ***. Again, predominantly white in ***. I love it here - it's got a little bit of everything really.*

I like to split this up between the Government's KPI performance figures and quality of life stuff. With regard to robbery, we are consistently second, third or fourth in the force but I have to put that in to context. It is about two and a half to three a day. Burglary – we are about sixth or seventh in the force and we get on average about five a day, five or six a day. Again, I think the perception of that is far worse. And car crime is again a problem for us and we have been averaging about 10 a day across the area. So numerically that is the biggest one. We have a lot of drive offs, stealing petrol from petrol stations– it is not a huge problem – I am just telling you what the issues are. We have quite a degree of shoplifting mainly from places like the shopping centre. We also have, not in high numbers, but in comparative terms a high number of armed activity. That's our worry because it is very real. (APS/C/CSI/18)

There is a high use of the section 60 power in area C, this appeared to be more frequently authorised than in area B¹¹. The area commander noted:

Section 60s are very typical. The first thing is that we try and make it that section 60s should be intelligence based, they should be based on where there is an existing or perceived potential problem. It should come through our tasking co-ordination group, which is held every fortnight. So targeting specific areas because there has been a spate of burglaries or violence or gun crime. It should be as much as

¹¹ The local policing area or Amberham Police Service generally did not have records of numbers of section 60s authorised at this time. So this is an impression and not statistically verifiable.

possible also based on description- offender type, MO, weapon type.
(APS/C/CSI/18)

This was recognised by front-line officers:

Yes we have them here a lot. The Superintendent authorises an OCU Section 60 throughout the area in relation to the amount of robberies that we have had.
(APS/C/PC/20)

*We do have a lot of section 60s at the moment to tackle gun crime and gangs. We have had a lot of shootings recently in the area, with gangs, armed criminality. So we have had that on going now since the last shooting, it is reviewed every so often and because of intelligence that we have coming in on the gangs etc. It is normally designated by the chief superintendent or inspector on the day, they designate a specific area. But at the moment ***, the area I cover is always in it.*
(APS/C/PC/25).

Section 60s appear to be authorised on a continuous basis in response to general crime problems in the area, such as street robbery and armed criminality, as opposed to specific incidents or intelligence. These crime problems are the same as in area B, yet area B appeared to have lesser use of section 60 in response to them. Once a section 60 has been authorised, officers are using stops at will as opposed to stopping target offenders involved in the crime the power has been authorised for:

My last scenario for a section 60, I saw a stereotypical druggie – with that vacant look and slight build. I was in a marked police car. I pulled over got out and explained about the section 60 and they were extraordinarily polite, which aroused my suspicions anyway. So I explained that I was going to search him.
(APS/C/SGT/21)

At the moment it is a lot of Asian boys and black boys that are carrying guns so technically you have got the power to stop and search anybody that you believe to be involved in a gang, if you have got intelligence you go and search them.
(APS/C/PC/25).

Although officers frequently noted the effectiveness of section 60 and argued that they should be granted these powers all the time, a number of officers questioned the effectiveness of these powers in reducing crime, instead pointing to the reassurance benefits:

No, - I say no; I'll get told off now. Yes and no. It's good for the public to see that we are doing something active but I think a lot of these criminals now are carrying

guns in vehicles and we don't have a pursuit policy as such. And I think if they have a gun on board then they are not going to stop and allow the police to search the vehicle. So they are going to get away with it on that specific occasion. So it is effective to a certain degree but serious armed criminality, I would say no. I think it is good for reassurance. People see us out there. There are lots of police officers on foot at the moment stopping and searching different people and we do search cars. If there has been an incident the area is flooded with police officers and the public love it, they really do. You would think that it would be a little old lady that likes to see the police officer but its all sorts of the community. (APS/C/PC/25).

Section 60 is a bit of a plaster really and is used more than it should be. I think the force has realised that police officers aren't doing stop and search as they should be. You don't need a section 60, if the officers know their stuff, what is going on then there are more than enough grounds to do a section 1. They don't need a section 60. I think that they are almost getting to the point now where they abuse the section 60... I think here, my own personal opinion – I am not the bloke who makes the decisions... We do have a lot of crime that more than justifies it but I think they overuse it because the officers are lacking in the confidence to use their stop and search powers, which they have got under section 1. With section 60, you don't have to have the ground – you can search anyone who is coming through but they are not stopping the right people. I don't think they are effective at all. (APS/C/SGT/19).

As this sergeant recognises, as in area B, the use of section 60 removes the threshold of reasonable suspicion, the discretion is exercised by senior officers, leaving officers on the ground to make stops at will regardless of the existence of reasonable grounds for suspicion.

The use of section 1 stop and search in area C is directly influenced by the personnel in the area. There was concern amongst senior officers that officers were unconfident in the use of their stop and search powers and thus they were not being used enough or in an effective manner. To correct this, a training programme was devised and delivered by a local sergeant. The area commander explains:

We couldn't work out why there was a huge disparity between teams both in terms of the number of people they stop and then the number of people they stop and search and then the number of people they stop and search and find something. I can't remember the figures now – but you are talking variations of 400%, 500% between the different hit rates. What we found was that there actually was quite a high degree of ignorance about what stop and search meant in practical terms. The

age profile of the area [officers] is a very young one, we have a high turnover of staff because what happens is because of the nature of the place - people learn very fast, they become very proficient, very professional very quickly. So we do have a high turnover of people and what happens is that you lose experienced people and they get back filled with new people. What you end up with is very young teams teaching very young teams. So what you get is lack of experience perpetuating working practice.

When we looked at which teams were successful, and by successful I don't necessarily mean the numbers of stop/checks. What we actually found out was why some teams were more successful and then we got one of our sergeants to go and train. He did a training course for every team on the practical side of stop and search. So what are you looking for, how you are looking for it, how are you explaining your actions, how are your actions perceived, why are you successful and you are not as a team, and how do we learn from good police officers - what makes them so successful or others not successful, why does one officer get complaints and another one doesn't. The other thing was that it was done by a sergeant who has a lot of credibility, as a very good practical sergeant who is well liked and very visible on the street. I don't mean to decry training but we deliberately wanted to put the practical side of it back in – not shove the legislation down their throats so that they would go away and do it. And that went down very very well and we have noticed since a flattening off of the disparity between the teams and a slightly but not massively increase in the number of successful stop/checks. By successful I actually mean where we recover evidence or it leads to an arrest. (APS/C/CSI/18)

That 'street-wise' sergeant was a likeable, straight talking, contentious character and

illustrates the impact of one personality on stop and search in a whole area. He identifies the problem:

Basically me, I have 27 years service and I have ended up here the last few years. All my service has basically been in inner-city type areas, very CID orientated and when I came back to uniform one of the biggest things that I found, that really did surprise me was in the amount of stop and searches that are done or rather the lack of stop and searches that are done. And the main thing is fear. It's the fear of being called racist if they stop black people. There is also an element of fear I think now because some of the younger ones are getting smaller and smaller and there are more and more females and they don't like stopping IC3 male, black males. They don't like doing it. They have almost actively been discouraged from doing it by the central training people. If you had seen how they had been trained a few years ago and what they were told they needed to stop and search someone, basically they were stopping and searching where really they should have been arresting them on suspicion of doing that offence. They weren't stopping people and the people they were stopping they were letting get aggressive, they weren't taking the correct details, verifying what they were being told or at least making sure that that person has nothing on them – weapons or whatever else, whatever they were searching for... Basically, I have tried to get them to use their powers and some officers still

will not. Unfortunately, it is a lot of supervisors as well don't really understand it and are frightened off by the allegations of racism. (APS/C/SGT/19)

The sergeant believes that the training and allegations of racism has stopped officers using their powers. Rather than react to a gut instinct that something or someone is not right, they spend too much time questioning whether or not they have the grounds of reasonable suspicion to make a stop, thereby missing opportunities. He emphasises the historical importance of stop and search and the development of suspicion to policing, but believes younger officers have lost or not been required to develop this instinct. The training delivered by the sergeant focused on what reasonable suspicion looks like in practice and instilling officers with the confidence to use their powers. He describes reasonable suspicion in the following ways:

In fact, it is just a little bit more than a gut instinct. You have the gut instinct that makes you develop the grounds. (APS/C/SGT/19)

In describing the grounds that constitute reasonable suspicion, the sergeant believes that suspicion is area based. Hence all of area C is a high crime area and so the major grounds are already present when officers are out on the street:

*And if they are on a road around here, in *** whatever, there are always robberies, always things covering the full spectrum – white, Asian, black. You know, if you go back a few weeks there are the grounds, there are the type of offences that are happening – burglaries, robberies, violent crime or whatever, theft of motor vehicles – there is enough crime on that street or that area to give you your grounds, right? It is common sense. I am telling this lot- you have burglaries all around you its by all sorts and all various descriptions, you know, go out there and you can almost stop anyone, you only need suspicion because you have got the grounds because of what is happening in that area. (APS/C/SGT/19)*

Thus suspicion is based on area rather than individualised behaviour. In defining reasonable suspicion in this way, the sergeant provides officers with very wide latitude for making stops, the fact that the whole area is high crime is enough, and

officers do not need to have more specific information about crimes happening on a particular road or location.

*A *** [rural force bordering Amberham] police officer probably has to be more careful and more thoughtful and know that he has got some specific intelligence from his briefing systems to say that the break-ins we are having down here are people coming from *** in this coloured van – this gives him his grounds and his suspicion. Don't need that here, the grounds are everywhere in the area. (APS/C/SGT/19)*

The suspicion is then formed when a person is in the area, if they are a known offender, if they act in a way that officers deem suspicious or if it is a time of day that you would not expect to see them there:

And your suspicion comes from who he is. One of the things that I found out there are officers still puzzled about where the suspicion comes from. They are told that they cannot use previous convictions and I argue that it is common sense – that I know if I am there in the street, where there has been robberies and I know that the burglars happen to arrive at 4 o'clock and you are there walking round and you see this lad that you know has previous for burglaries walking down the street. Would you think that you can ignore that fact? (APS/C/SGT/19)

The sergeant provides a concrete example that contradicts his earlier explanation, providing specific intelligence about a crime with a suspect description at a location and a time:

[T]here has been a spate of burglaries round here at this particular time and there is some descriptions of say an Asian lad aged about 25 seen running away from the scene, yeah? They are there on their own and they see this lad 25, roughly, that is basically all the description that we get, they stop this lad and they find that he has a bit of form, a few previous convictions and they stop and talk to him. "Where have you been?" "I have been to my Mum's" "Yeah, Well where does your mum live?" "Okay, what is your name?" "Joe Bloggs." You get a feel for him – he's alright and It's fine. It is when you approach them and very often they have got something with them, something goes down, or they do something, it is all body language to move away from you. So you have got your suspicion there and when you talk to them you think you have got the grounds, you have got the suspicion there, he is sweating because he has been running, the classic man being disturbed at a burglary, he has run off, and he is wearing like blue jeans, blue top, could fit anyone in an area, Asian lad black hair and a moustache. Half of the people you see, even three quarters but this one is sweaty, something is not quite right with this one. Now I would argue that officers at this stage then have enough grounds to arrest this man, they actually have enough, they know an offence has happened and they actually have a suspect offender. (APS/C/SGT/19)

The sergeant encourages the officers not to let allegations of racism affect their stop and search use. He believes there will be a disparity in stop and search use because of the multi-ethnic nature of the area and because it is young black men committing the robberies in the area.

When I teach, what I have heard is it's this thing of being accused of racism. You have to take that out, if you are working here you get to know genuine offenders – who they are, the people who are hanging around, you know the ones that are committing crimes but not getting caught all the time – you have to just target them. They are criminals, whatever their racial background you have to just treat them as criminals. And just try and look at it that way and if you are doing that – you are thinking correctly and you are doing all your background work - then no one can criticise you. We can only task the officers on the crimes committed. Because someone actually said to me why don't we task the officers to stop white people round here. I said number one there aren't that many white people and two, the other thing is that if the offences are being committed by blacks or Asians that is who they stop. (APS/C/SGT/19)

Thus an area suspicion is translated into a racial one. The training provided by the sergeant was well received by officers, several mentioned having greater confidence in their powers now they had a greater understanding of applying what the sergeant defines as 'reasonable suspicion,' while others noted that the training contradicted what they had previously been taught and had left them confused.

*Yes, had a whole training day dedicated to stop and search. Everything from the powers of stop and search to filling in the forms. It was quite useful, quite helpful because the trainer elaborated on the grounds for searching people and elaborated that you could use the power more widely than a lot of us previously thought. The trainer was a sergeant from ***. I think I was a bit cautious about using them so widely, but didn't know myself that I could use those grounds before. It confirmed in my mind what I could do. I was using it narrowly before. (APS/C/PC/22)*

The legislation is ambiguous, we are told that you can stop and search people based on previous offences and the location etc. Now on the back of the forms it says that you can't stereotype, so you can't do it on known offences or based on the place. But then the training said that you can stop a known offender – it's confusing, really. (APS/C/OBS/8)

Training put the frighteners on us new officers. We weren't using it enough. We were told by a sergeant in our area that we were not using it enough. They explained the PACE changes – if you have a known offender in an area where you

have recently had a spate of burglaries or car crime, this is most of our area, then you have the grounds to stop and search. This has put our numbers back up. Known offenders are all we have got sometimes. You do have to concentrate on offenders and at least stop and speak to them, see what they are up to, if they are likely to be suspects. There is a problem there but it is all you have got. It is not often that you ever see people in the act, burgling a house or a car – so the only way is to stop and search people you know are committing those offences in those areas. (APS/C/OBS/7)

The training had an obvious impact on use of stop and search in the area. ‘High crime area’ was often the first ground that officers gave, followed by ‘known offender’ when describing the reason for stops. There was also a focus on drugs in this area, particularly amongst crime fighting officers. Thus suspicion is usually formed by area, smell, appearance or seeing a known offender. One typical example is:

Location is important – we have a lot of crime round here. Then what they look like – as in what they are wearing. I am looking for a grubby appearance. Style of clothes – a bit stereotypical but don’t see the average druggies in a shirt and tie, looking for scruffy sportswear or jeans and the type of build that they are. Also look at their fingers – druggies have fat fingers – fatter than non-druggies and out of proportion with the rest of their bodies. (APS/C/PC/22)

As in area A, officers mentioned feeling pressure to meet stop and search quotas. Senior officers explained these not as quotas but said they were targets aimed at increasing overall effectiveness. There was also similar ambiguity about what was meant by ‘intelligence-led.’ Officers offered vague descriptions of ‘suspicious’ people or incidents as opposed to detailed knowledge of crime patterns in an area or concrete information about individuals involved in crime in a specific location as intelligence and often talked about using stops to gain intelligence.

Examining the disparity

Other studies have highlighted officers’ feelings of increased scrutiny with regards to their use of stop and search powers (Foster, Newburn et al. 2005; Shiner 2006). The scrutiny is

described in terms of internal accountability mechanisms of recording stops and scrutiny from the media and a hostile public. Officers in Amberham expressed feeling the need to justify increasingly their grounds for conducting stop and searches:

Main problem I think is that sometimes you have to justify your grounds more than necessary to the person you are going to stop and search. The people that are committing our crime – know the law – from experience, their solicitors, they do get clued up very easily. Sometimes it feels like they have one-upmanship on the police. (APS/C/PC/22)

Some officers, particularly those with less experience articulated feeling uneasy about conducting stops because of scrutiny and sergeants frequently mentioned that they felt officers under their supervision were unclear and unconfident about their stop and search powers. For some officers, the increased scrutiny is directly linked to race and concerns over disproportionality. At ground level, disproportionality was not perceived as a problem and officers felt that it could be explained by factors outside the control of the police. Disproportionality was either explained as a product of the recording process, by the perception that black people were more likely to be ‘available’ for stopping or greater rates of offending. Several officers mentioned that disparities within the statistics are a result of officers only filling out stop forms when they stop blacks and Asians as a ‘back-covering’ exercise as they are perceived to be more likely to complain:

I think historically we never used to really fill these out for the white lads, we used to fill them out for the black and Asian lads because they were more likely to complain. It was a bit of a back-covering exercise. Now with the training we have had on the new forms, basically they have been told that they have to come in at the end of each tour of duty. They are filling them in as they have been told to...I think that my main issue would be that I want to see the police going into the black community and the Asian community and maybe doing some training – some more information on why it is being used and actually conducting some surveys from this on who is actually being stopped and searched. Because this is like a myth that police stop and search black people more – it’s just not the case. (APS/A/SGT/3)

Officers were also keen to point to the demographic make-up of the area they police as explaining why stops are focused on certain communities. A lesser number directly noted greater offending among black men as the reason for the disparity:

Is there any thing else you would like to say?

*Sergeant: I have worked in white areas and I have worked in multi-cultural areas and I use the argument that there are villains in every community. If you worked in *** for example, a predominantly white area the vast majority of your searches for a proactive team will be white suspects. We work in area B, we have told you the make-up of the areas and that is across the board the make up of the people that we stop. I think we have more resources in area B, more proactive policing. So we are stopping more people than police in other areas that haven't got proactive teams, so you are getting more stop and searches simply because you have got more proactive resources being put into an area, which have higher crime rates or serious crime. If I was in *** I would expect most of my stop and search people to be white suspects, here the vast majority of people are black or Asian... If we have white druggies coming in to buy or score- they get stopped and searched but the vast majority people here that we search are black and Asian. They are the people that make up the population and they are the people committing crime. If you look in London, if you look at any of the big inner city areas, which have the most police resources they are the areas of the high crime, the serious crime, the drugs and all that and I think there are a lot of resources pumped into areas that have high make-ups of various ethnic groupings. Because they tend to be some of the poorest communities, they tend to be most plagued in terms of certain types of drugs, although again drugs are spreading across the board. The big inner cities also attract the ethnic minorities groups, which is where the vast majority of police officers are in the United Kingdom. If you are a bobby on the beat in Wiltshire you probably do a stop and search once a blue moon and there is not many police officers in Wiltshire full stop. But we have got thousands of police officers in Amberham and a large percentage of them are in the inner city areas. And that's my argument to the racial argument, "you only stopped me because I'm a black male" – well that is just not true. (APS/B/SGT/17)*

And that is where a lot of the confrontation comes in with the IC3s [blacks] because they won't stop and things like that. I don't think it is as bad as it used to be but because a lot of the times they know they will get away with it. There is also the disparity of the blacks that get stopped compared to white people. Street robbery is very hard to pick someone up. A lot of the offences were committed by IC3 males and it is still predominantly so. It is still very much... I have been on holiday to the Caribbean islands and one of the things that they do is keep you in the hotel compound because robbery is rife it is almost like a way of life in some of these places. So I think people can get the idea in some ways but if you look at the statistics it is still very much in area B and C, places like that there are a lot of robberies committed by young blacks, you know about 17 – 23 year olds... I mean really you walk out the door this way and you are in to a population that is probably 90% Asian. So it is not as if there is any white population there so when they go out they are dealing with Asian and blacks – so your stops and going to be

predominantly black. So I don't know what your views are and whether you consider those views racist. But if you look at the figures it is very much being committed by young black men. (APS/C/SGT/19)

The recording of stops and increased accountability is considered to be an attack on the credibility of the police. This was expressed as an accusation that all police officers are racist. The following quote is illustrative:

The introduction of that form has basically called me a racist. It [the training around the introduction of the stop form] was just the way it was put out - it was all aimed at stopping black and Asian people and I don't stop black and Asian people, particularly in an area that is predominantly white I am going to stop predominantly white people. And I just felt I was being labelled a racist and I know what my stop and search powers are. I don't think that it is the training. I think that the use of that form has labelled police officers racist. That form is saying we are going out there, we are not recording what we are doing, we are having a disproportionate amount of stops where we stop blacks and Asians. I think our only weakness has not being completing stop and search forms when we have been stopping white males. That's my view. (APS/A/PC/10)

The police feel themselves victims of a system where they are afraid to stop black people for fear of accusations of racism and where they have to protect themselves from a system of recording that is preventing them from doing their job, perpetuating that belief and encouraging complaints. Some officers talked about “playing the game,” avoiding complaints by letting suspicious people walk by and crimes go unsolved or completing the forms religiously to ensure actions cannot be misconstrued:

There is also an element of “if that is the way they want it played... I know that this guy is a burglar and that he is actively burgling but I've got no grounds to stop and search him – so I will stop and speak to him but I won't search him.” It is almost - if that's how you want it then that is how you can have it. Its almost – it went through a phase of frustration to sort of just acceptance – if you don't want us to... You know it is used, the stop and search powers are used to combat crime. When I first joined they were used as a bit of a tool to keep people on their toes to ensure they are not playing up to ensure that they are not carrying various articles around, but as it has changed it went through a period of frustration but now it is almost just – not apathy as such but just acceptance. (APS/A/SGT/3)

Most of the officers are fed up with being called racist, to be honest. I mean a lot of the stigma with that has come from the fact on this force if you are black you are 8 times more likely to be stopped than if you are white. The police officers accept

that that physically cannot be the case because if for every white lad we stopped we stopped 8 black lads – well I stop about 5 white lads a day so then I would be stopping 40 black lads and that physically cannot be the case. So there is a feeling that we have got to fill these in because we have got to change the perception.
(APS/C/SGT/21)

Such feelings were widespread amongst the officers interviewed. Although it is unclear what direct impact such feelings have on stop and search practice, it is likely that the initiatives introduced post Macpherson have not received the support and ownership necessary to impact significantly on practice.

Special operation

A special operation, involving extensive use of stops, which was running across four policing areas (including areas B and C) at the time of the research, provides an example of an initiative that was centrally designed then took on a very different operational look in each area. The initiative was devised by senior area officers. It was then interpreted by officers within area commands who adapt the policy to adhere to their local context and standard working practices. Officers on the ground have the initiative as a resource to draw on but interpret it in ways that reflect their personal experiences and agendas.

The special operation began in July 2003 and ran for a total of six weeks across four command areas. The operation was launched in response to a period of nine days at the end of June where there were two murders and three attempted murders across areas B and C. All these incidents had involved firearms. This took place in an atmosphere of increased sensitivity to armed criminality in Amberham after various high profile shootings. The operation began in haste but there had been limited community consultation conducted through the Police Authority. The operation was presented as having two components – tough law enforcement to catch the people involved in the

shootings and high visibility patrols to reassure the public. The law enforcement side of the operation was described as ‘intelligence-driven’ and involved a number of proactive strategies, which included surveillance and arrest of those thought to be involved and armed automatic number plate recognition (ANPR) operations. The other component of the operation was high visibility patrols. During community meetings, there was concern that these patrols would take away from the everyday policing needs of the community, so extra officers were drafted in from other areas within the force. During the course of the operation, each area was provided with a van with seven police officers and a sergeant. These could be officers from the local area as well as officers drafted in from across the force. The aim of the high visibility patrols was reassurance:

[The operation] started because of the shootings, to try and stem the shootings, catch the people responsible and at the same time and most importantly from my perspective here in terms of the uniformed staff that come in every day and the briefings I do, its about, the message I say is “go out there and speak to people, reassure them, let them know you are there.” Whether the uniform reassures who really knows but it appears to. The feedback that we are getting is that people feel better, feel safer, the informal feedback that has been picked up in the meetings is that they like to see the police presence. For me that was one of the biggest agendas for [the operation] was to be visible and to stop and talk. (APS/B/SI/12)

The emphasis on reassurance and stopping and talking to people was broadcast repeatedly during the briefings I observed in area B:

*You will all be aware by now of the shooting that took place yesterday. It has changed nothing, with regard to the Operation. It is about public reassurance rather than a section 60. Today you are going to focus on ***. The scene has been released after yesterday – so the public will need reassurance. The emphasis is on stopping and talking to people... We want you to engage the community, talk to people. Before last night's incident we had had no gun crime during the duration of the operation. There is no section 60 in place but feel free to use a s1 if you have reason to. We are not trying to find minor offences; we are trying to avoid arrests. Just presence and reassurance. (APS/B/OBS/3)*

In addition, officers were given briefing cards to ensure that the aim of the operation was clear to all involved:

*I do the briefings and I do as many as I can personally for the staff that come for the Operation but what these little cards do is act as a memory aid. It has bulletin points about what Operation *** is about. I am saying to people from outside the area – go and stop and talk, and if you can't think of nothing else to talk about then those are the points that I want to try and get across to the community. And on the flip side are their stop and search powers, just so they are crystal clear about what they can search for under section 1 and then the section 60 powers. Because one thing that I say is when they get the briefing, and they get a specific intelligence briefing after the main briefing, the fact that they haven't got a section 60 doesn't mean that they can't stop and search people. So it explains what their powers are under section 1 just in case they do need a bit of a reminder – it is crystal clear for them what they can do and what the limits of what they can't do. (APS/B/SI/12).*

In area B, these cards were distributed at the end of briefings along with pocket maps of the patrol area and an intelligence pack containing photographs of wanted individuals. The senior officers and community members who devised the strategy were aware of the problem of using officers from outside the area to patrol:

*It is not about stop and search it is about stop and talk. We have had police officers drafted into the area for the last five weeks, they come from all over the force area. And they are not the same people everyday, so it would be much easier if we had the same staff who were available to build relations with the community. But these extra staff that are coming in above and beyond are something we call inter-area aid. Now by the very nature of that it is meant to be a short-term thing – so there is not the mechanism in place to guarantee that it is the same people coming in every day. Because *** and *** have a reputation, which I think is unjustly deserved, we had a danger that, or I felt there was a danger of people coming into the area for one day, posted to be in ***, and having preconceptions around what that area is. If you walk down that sort of area you have young black kids, young Asian kids that hang around on street corners day in day out, most of the time they actually aren't doing anything wrong. But by having new people in everyday with preconceptions of the area, if they were given freedom to go and do what they want, if they had something like the section 60 stop and search powers, I had concerns that the same kids would be stopped and searched every day. And the next ones would come in and they would stop and search the same kids. And that would undo any of the good work that we have been working hard to do. And that was quite a deliberate tactic that I had to reinforce it because they would come from their performance driven cultures as well and think that round here they needed to be doing something. They would be looking for people carrying bits of drugs, they would be looking for people carrying bits of weapons, and their primary role coming here wasn't that, I had other people doing that. (APS/B/SI/12).*

In area B, patrols were first briefed in the station. The van then toured the area, dropping officers off in pairs to patrol assigned routes on foot; officers met up at designated points

and patrolled together in the van after it got dark. The reassurance aspect of the operation was undermined by the reliance on officers from outside the area. Although senior officers had gone to great lengths to minimize this problem, officers didn't know the area, the people and the problems and were uncomfortable being there. My fieldwork diary records:

*At the start of shift went to dinner in the ***. During the meal, all the officers commented on the fact that they didn't want to be there – didn't feel safe, didn't know the area or the persistent offenders and so wouldn't know who they were looking for or if they were walking past people with firearms. The officers had the stereotypical notions of *** as a dangerous, gang-infested community. They didn't feel that the briefing packs that they were given were up-to-date and only contained the most wanted photographs that they were already familiar with, not lists of problem roads, or local gang member photographs that they would have found useful. Two days before patrol, a tutor constable and two probationers were run over by a known gang member on one of the roads that they were about to patrol. The discussion around the table was that they had heard that the tutor constable had been left paralysed and they were going out in the same area and wouldn't know who to look out for. One officer said, "It feels like we are fucking bait." (APS/B/OBS/4)*

I spent the beginning of the shift patrolling with two male officers from outside the area. The fear felt by the officer was palpable. They walked the designated route, greeting people they passed; most often being completely ignored. When people did respond the officers did not refer to their cards and seemed unable to take conversations further. Two incidents during the patrol highlight significant problems. The first was an illegal stop and search of three boys. My fieldwork diary records the incident:

Near the park the officers stopped three young white boys – all around 13 years old. They asked what they were doing – they were all on school holiday and were just walking around and 'hanging out' because they were bored at home. One of the officers asked them one by one their name, address, date of birth and to turn out their pockets, which they did. These stop and searches were unlawful and at no time did the officers inform the boys that they were neither obliged to give their details or turn out their pockets. All complied, none of them had anything on them apart from mobile phones and keys. No PNC checks were done and no records were completed of the stop and searches. (APS/B/OBS/4)

There were no grounds to conduct the searches and voluntary searches were by this point banned. Since no record was made, administrative controls failed to control an illegal

search. Just before the search of the boys we had walked passed a high-profile gang member. The officers clearly recognised him from the briefings. At no point did the officers attempt to stop and talk to him. Instead, the officers picked the ‘easy targets,’ three unthreatening boys who were clearly doing nothing wrong.

The philosophy of stopping and talking and building community relations was further undermined later in the patrol. As we walked through the park there were two young black boys (aged about 13-14) untangling the swings in the children’s play area. As we got nearer, we could see they were with two small children – a girl of about five and a boy under two. The officers greeted the boys, who made the fatal mistake of responding to the greeting:

One of the boys responded to the police greeting, which prompted the officer to enter the park and approach the boys. He then asked one of them if he had ever been in trouble with the police to which he answered “no.” In the hot weather, the boy only had on track bottoms and a T-shirt slung over his shoulder – so it was clear he had nothing on him. The officers proceeded to conduct a stop/check. He asked the boy his details (name, address, description) and did a PNC check over the radio – which came back clear. He then proceeded to complete the stop form and hand him a copy. The actual stop was conducted in a friendly manner and the officer tried to be jovial such as when writing down the boy’s description, “what build are you – do you think you are quite built, huh?” It was quite informal and the officer explained that he was going to make a record. So if he was stopped again he could just show it and say he had already been checked. The whole process took under ten minutes; during the exchange the other officer spoke to the children. It was clear the boys were babysitting and had brought the children to the park to keep them entertained. The young girl (around 5 years old) was very sweet and talkative and talked to the officer about her recent holiday in Jamaica and that she knew the police “got rid of bad guys,” but when she saw them completing the stop form; she panicked and said “are you going to take my brother away? Are you going to take him to the police station? He’s not a bad guy” – so much for community relations! The whole thing was very intrusive and unnecessary when they were supposed to be out there reassuring the public and building relations. (APS/B/OBS/4)

It was clear what the boys were doing and there was no reason to expect one of them to account for his actions. It was shocking that such a stop would take place in front of young

children and equally so the idea that the boy should be checked after simply being polite enough to answer a greeting. If he had ignored the police (as so many others did during the patrol) he wouldn't have been checked and had his details recorded.

The operation in Area C

The operation was also underway in area C. In principle, the operation was coordinated by the superintendent in area B, in the same spirit across all four participating areas. The goals articulated by the area commander echoed those previously noted:

[F]irst of all it is public reassurance. There was some real concerns about the level of armed gang activity and the chance of further reprisals after the three shooting incidents. There is then pure disruption. When it happened – I think that it caught everybody by surprise because the people involved in that were not heavy criminals. They were drugs dealers and we do know about some of them. We go through their background when they are being targeted and arrested as suspects and they have got things like possession of cannabis or disqualified driving, assaults – so they were not your big gangsters. So what we recognised was that one of the things that we had to do was take the ground from them – pure and simple. If we place officers in the right areas at the right times we would deprive them of the ground to operate both as drugs dealers or for potential gang activity. There is also an issue over making a very overt statement to the community that the gangs don't hold power. It is supposed to be a) enforcing the law, b) not allowing the gangs to operate and c) preventing an suggestion that the community themselves might want to take any action. At the same time we wanted to make sure that we were seizing any evidential opportunities and if you did gain trust and confidence, if you can make contact on a human level, on a personal level people are more likely to come forward. That's effectively what it was all about – reassurance, disruption, taking the ground and securing evidential opportunities and that is basically what we were trying to do and what we seem to have achieved, I think. (APS/C/CSI/18)

In practice, the operation took a very different form in area C. Whereas in area B, the focus had been on stopping and talking to people and the briefings had focused on ignoring minor infractions such as personal cannabis use, in area C a section 60 was authorised everyday during the operation and the emphasis was on stopping and searching people. This is illustrated in the briefing for the operation:

*Inspector: This is an operation in response to the shootings in C and B. It's the usual gangs – ***, and *** and a couple of families that want to challenge them.*

This is a high profile operation to stop the gangs; it's a massive displacement to gangland violence. What we want from you is to be out there and be visible, high profile. Criminals are not going to try anything and the public are pleased to see you. The criminal element is also pleased to see you, as they know they are not going to get shot then. There has been some aggression towards the police officers, we are not expecting any trouble but if there is the slightest trouble – radio and you will get backup. The briefing package has a list of vehicles and photos. It's a rainy day, so you might not want to do that much walking. I don't mind if you stay in the vans but please get out some of the time. There is a section 60 in place for the outlined area. It has been in place for 6 weeks. Some people have quite rightly been stopped and checked. It looks like some of the young lads being stopped are giving the same name and will claim later that they are being harassed, so please be aware and mark it up on the stop forms if you suspect this. If there are any arrests, I need to know at the end of the day.

*Local patrol officer: Stop and search when you can. If you are stopping people and getting hassle that is just confirming that you are stopping the right people. The problem that we are having on *** is in the subways – people hanging around to do robberies. I am handing round pictures of two local prostitutes that are robbing people. The radios don't work in the subways so be careful. If you can spend some time round the *** Parade, we have had problems round there and its pension day today so there will be lots of old ladies collecting their pensions before the holiday. There are usually lots of kids hanging around – turn them over.*

Inspector: If you come across any of the gangs shout for extra support from the other serials. If any one gives you any problems, call straight away, need positive action, we can get other serials. We will sort people out – we don't want to get into a situation where we have to back down. The armed response unit is also around. People who can't do their usual work because of the weapons are going back to robberies. We must take positive action whenever possible. If necessary we will go into full public order. We will have a couple of units bring people in, bring in whoever you need to. (APS/C/OBS/6)

The danger level was the same in both areas and yet the senior officers in area C placed greater emphasis on the threat and need to take tough action during the patrol. Officers were told about other local crime problems to look for and 'stop and talk' was not mentioned. The emphasis on threat and increased use of stop and search appeared to follow through in practice. During the shift, I observed two female officers who were from area C. They were familiar with the area and so comfortable making stops. Within the first hour they had stop/checked three young men (aged between 15-18); every young person whom we encountered during this time. In all three cases, it was obvious what the boys

were doing (two were outside shops, one was walking home) the stops were cordial and officers were friendly and explained the purpose of the operation. On each occasion, they conducted a PNC check over the radio and completed stop form. The response to these officers was friendly; partly due to the fact they were attractive young women and spoke very informally with the young men they stopped. The high rate of stops seems to have been a consistent feature of the operation in area C, as one of these officers mentioned:

*When we first did public reassurance we flooded *** and ended up stopping the same people two or three times on the road, they would pull out all the forms.*
(APS/C/OBS/6)

This was confirmed during the later interviews:

Because it has been running for so long – we know who is regularly being targeted. The briefing said that it was about reassuring the public and giving a police presence. It was mainly just talking to people. The people that you wanted to stop and search just pulled out their form from a few hours earlier – so you have to use your discretion and let them be on their way. (APS/C/PC/22)

These quotes also show that stop and search is often not just one single encounter but forms part of on-going interactions where the same people are being stopped time and again. The focus on the danger and hard law enforcement contributed to the feelings of fear and unease of officers from outside the area drafted in for the operation. Again, these officers were not happy with the situation. During the second half of the patrol, I observed two male officers from a city centre area. Neither officer made any effort to talk to, stop or stop and search people. They seemed relieved that I was there and so chatted continuously ignoring their surroundings.

It was not clear why a section 60 was in place during the operation. My fieldwork notes illustrate the arbitrary use of stop and search during section 60s. After it got dark, all officers patrolled together in the van:

*9.00pm – all officers were picked up from their foot patrols and the police van continued to patrol the area. A car cut in front of the police van on the main road. The van chased the car for ten minutes (it was not necessarily evading the police – the roads were just busy) before it stopped on *** Road (which is just outside area C territory). There were three young Asian boys in the car, the boy driving explained that he had borrowed it from his father and the boys in the back were his younger brothers. They were very apologetic and admitted that his action was bad driving. Three officers got out of the van warned them about their driving and gave each of them a stop form. On the way back to the main road from that incident the van came behind another car that was being driven poorly. It was driven by a young Asian boy. Since this stop took place within the section 60 area, all the officers got out of the van and thoroughly searched the boy and the car. Nothing was found, the young man was given a stop and search form and a HORTI. (APS/C/OBS/6)*

The situations were practically identical. There was not the necessary reasonable suspicion to conduct a search during the first stop but since the second stop took place within the designated area – officers used the section 60 to conduct a stop despite the fact there was no suspicion of any type.

It appeared that the extra officers available during the operation were being used to pursue other local objectives. The local intelligence officer noted that often during section 60s officers do not have any extra time to stop and search – so the operation was seen an opportunity to use the extra serials for stopping and searching and gathering intelligence:

From an intelligence point of view, section 60s are extremely useful. But if you don't have the manpower there is no point in having a section 60. We have found historically when section 60s are in place with no extra officers they don't have the time to do many more stop and searches. What we have found useful with [the operation] serials is that they have had the time. It certainly creates new intelligence on who is where and who they are with, very useful when you wouldn't expect to see them there. The more stop and search forms, the greater the intelligence that we have. The serials have more time to put more information on the forms, like clothing etc. (APS/C/PC/23)

Officers involved in supervising the operation were aware of the problem with using officers from outside the area, the poor briefing and use of the operation for other purposes. One sergeant commented:

*The briefing pack for that isn't very good. Because I know the area and know the issues the briefing that I give to my officers is probably better than average. It was reassurance really, but we need to be stopping the people who we think might be connected with either firearms or anti-social behaviour, but mainly firearms. But at the end of the day when you have kids that are shouting verbal abuse at you, you wouldn't otherwise be attracted to them except for the fact there are a group of kids but when they actually enter the frame and start shouting abuse at you then you are more likely to go and speak to them, aren't you? Then things progress from there. Yeah, we have been quite lucky because we have had the nicer area; we have had the park as opposed to *** Road. And I think that it is a twofold message really. Ultimately we are supposed to be speaking to the people who the community would like us to be speaking to and obviously we are there for the reassurance for the people and the community that would like to see police officers there. I have found it quite surprising the lack of knowledge or misunderstanding of the legislation by some of the officers that have been drafted in. Having done it two or three times, I now realise that a full briefing on section 60 stop and search powers is beneficial. Because ultimately I was having conversations with people out on the street who I assumed, my fault as a supervisor, I assumed knew the legislation quite well because we use it so frequently now days and they were talking about arresting people for all sorts of things. A lot of them have very limited idea!*
(APS/C/SGT/21)

It seems that an increase of officers stopping and search young people repeatedly would undermine community reassurance and antagonise young people. Thus an operation which was designed with a specific purpose has changed significantly once it is mediated through a local police culture that emphasises tough law enforcement and uses the extra officers for other crime related purposes and individual officers who are uncomfortable and so use the operation to pursue other agendas – such as passing the time till the shift is over or stopping ‘easy targets’ so they can appear to have been proactive.

Part II: Brookshire Police Service

At the time of the visit, Brookshire Police Service had a stop and search policy that had been distributed to all officers. The policy recognised the importance of stop and search to crime reduction and protection of the community. The policy emphasised the importance of treating any person stopped with respect and taking into account community concerns about the power. It goes on:

Through the monitoring and supervision of “stop and search” activity we will ensure that officers using stop and search powers are not contravening the provision of the Code of Practice by exercising their discretion on the basis of discrimination or stereotyped images. In order to discourage inappropriate use of “stop and search” powers, qualitative targets for “stop and search” will never be set as an indicator of performance. (Brookshire force policy 2003)

The policy was supported with a training programme that emphasised intelligence-led use of stop and search, compliance with the Code and the conduct of searches. Officers were directed to always consider proactive stop and searches in relation to local intelligence.

This was divided into four areas: routine stop and search in an area should take place based on local information and crime patterns identified in the daily briefings; ‘hot spots’ should be targeted in formal planned initiatives; each officer had been assigned ‘micro beats’ and should develop intelligence focused on this limited area; and officers should use target profiles of individuals based on their crime profiles in specific places. To ensure that officers complied with the Code, training emphasised that stop and search would not be treated as a performance indicator. Quality not quantity was important and to ensure this, officers were expected to follow the GOWISELY mnemonic in their stop and search interactions.

Brookshire Police Service has a low use of section 1 stop and search and very low use of section 60, in comparison to Amberham Police Service. Despite this there was great resentment displayed by officers around the area of stop and search. This hostility was linked by officers to the Macpherson Report. Senior officers spoke positively about the changes they had seen coming out of the recommendations:

I think there is a substantial change, it has been a watershed. It has forced the police to look at practices and officers are a lot more aware of community relations. I think they are more aware of the negative impact that insensitive policing can have. But I say in respect to the Macpherson Report, I personally feel and I have been in 27 years, I came in just after the riots. The average officer now is more understanding, more sympathetic and more conscious now to the consequences of policing. The only perhaps negative effect is perhaps it has made

some officers from my own experience in the city some officers were reluctant to stop and search when they have got valid powers people from visible ethnic minorities who challenged them “you are only doing this because...” I have seen a number of officers who have had complaints, where the allegation has been “you are only picking in me because I am coloured.” I have heard officer say, “It is not worth the hassle.” (BPS/E/I/21).

This perception was not shared by officers on the ground, who articulated a clearly anti-Macpherson discourse:

When the Macpherson Report came out because a lot of it was based on policing in the Met and everybody in the Police Service knows that the Met aren't exactly the best in the world. They do target people. And it caused a lot of waves because everybody was tarred with the same brush, it didn't matter what your policies were – you were all racist, you all stopped black people. Sir Paul Condon, the bloke in charge down there, said, “All robbers are black,” so everybody was: “you are only stopping me because I am black.” “No, I am stopping you because of a, b, c, and d.” They may have changed the policies but it never changed my way of doing it – it doesn't matter what colour you are, if I have got the grounds I will turn you over but I won't if I haven't got the grounds. So it made a lot of people I think, “why do I have to put up with this?” A lot of that is not forgotten but people don't mention it because it had been rammed down everybody's throat for ages and ages afterwards, people got sick to death of hearing about the Macpherson Report. (BPS/B/SI/12)

As to whether it established the fact that we are institutionally racist, as the chief constable said a lot of people have been confused by that and exactly what it means and doesn't mean. If an individual has strived to build community relations and your friends are from a wide, diverse, multi-cultural background, why should I be labelled with that tag? I think that was one of the things, missed opportunities to have some more qualification as to what that phrase meant. A lot of people who are good officers working hard to build relations were quite offended by that; they saw it as a slur on their professionalism. So I think the force could have done better with quantifying how are we? And what does that actually mean? I don't think that was done. The wider debate on stop and search has been a bit of a political football over the years that has been kicked around and in my experience again I think officers have become reluctant to use it because of the challenge “you are only stopping me because...” (BPS/F/SGT/27).

Many officers expressed this belief that the problem lay with the Metropolitan Police Service and that everyone had been unfairly tarred with the same brush. In particular, the Report was seen as questioning their professionalism and calling them racist. As the officer above highlights, there is still a lack of understanding about the concept of

institutional racism, which remained interpreted by many as pervasive individual racism in the force. The Report and the resulting changes are directly linked to race and the stopping and searching of minorities and so were not seen to apply in the more rural areas in Brookshire.

It coincided with me coming out here. To be honest out here there is very little difference because it is mostly white lads that you are going to be stopping here. You get a very different attitude of people working out here. Macpherson is not really relevant here. (BPS/E/SGT/22).

The controls are a lot stricter than they were before Macpherson. But it is mainly aimed at race- but that very seldom comes into play here. In general, the actual variation in grounds is as wide as it has ever been. People are more aware now and aware that they can be held to account. The lack of voluntary searches is a blow. PIs are only part of the disruptive activity, so cannot generally say whether crimes are actually going up or down. Whether the general public think the negatives outweigh the positives. Could stop it completely if that is what the people want. But my view is that people do think that they have to be looking to arrest people before they even begin a stop and search. So pIs are seen as much less of a tool we can use. (BPS/E/PC/26).

*I can't remember the last time we had a complaint about stop and search. In ***, we have got a high percentage of Asians and Sikhs but have never had any complaints about the police going about their business there, so I think we do it quite well. (BPS/F/SGT/27)*

Although the changes to stop and search were primarily the increasing of administrative controls around recording, officers perceived the changes as legal changes. Officers in this force spoke with a real nostalgia for past policing practices around stop and search and perceived the changes as fundamentally changing practice:

20 years ago or even longer for stop checks there wasn't forms, it was like – gut feeling that will do. So you just stopped people, you searched them and Bob's your Uncle... There isn't enough of it that goes on to be quite honest with you. If you look at our crime and the amount of crime that we have compared to the amount of stop checks done – it is so minimal, stop checks in comparison. There are a lot of people out there committing crime, whether it be one group doing a lot of crime, or another group doing a lot of crime. Stop checks have reduced in number over the years because of the new legislation that has come in and as a result crime is going up and stop checks are going down. Officers, certainly the younger ones I am sure feel they need more evidence to stop check people, you know and no matter how much you explain that you don't need evidence just to stop and talk to somebody, if then you form your opinion that they are being evasive or difficult, then maybe you

invoke stop and search powers. But if it is very difficult to get them to exercise their powers which they do have. (BPS/B/PC/10)

When the new laws came in earlier this year, with the new rules and form - we had some more input as part of one of the classes, think it was about 3 months ago. Its changed from when I started - you could walk up to people and say you know, "you're walking through this area this time of night I don't suppose you'd just show us what you've got in your jacket?" and that was ok. You know no one would bat 2 eyelids at the police force. And now you can't do that now so in the 2 and 1/2 years, which isn't very long in the service it's all changed. I'd say it hasn't really affected me. If people are just walking through an industrial estate at that time of night there's 100million reasons to be there - use it as a cut through or anything like that. If they're doing something strange then you've got something to search them on. It's just the luck of the draw if you go round the corner and see them do something strange or they see you first and carry on acting normally. (BPS/B/PC/11)

The legislation was perceived by most respondents as negatively impacting on policing.

All officers spoke about the increased scrutiny around stop and search making them uncertain about using their powers or about colleagues, particularly younger officers being afraid to use stop and search. There was an overall perception that the numbers of stop and search have gone down and this is affecting their ability to fight crime:

I don't use it as much as I used to because of all this new legislation. I think we are over restricted. It is not a power any more; it's part of arrest really. Obviously it has to be monitored and governed but I think we have lost the ability to carry on policing, if you see someone in an area where you know there have been burglaries you have no power to search them. You might know there has been a burglary in the area but there has to be more grounds than that to search them. Which the criminals tend to know as well. Whereas before you would have searched them for the screwdriver, the hammer but now you can't even if you know there is a history of burglaries, an area for high burglaries – not enough grounds still. I just think it has gone too far the other way and that is probably the view of most Bobbies today. It would have to be monitored, I'm not saying don't do that but just let the Bobbies be the Bobbies. Like if they know someone has done something let us search them. Its prevention and disruption. If the kids know they are not going to get tipped up they might as well carry knives. (BPS/E/PC/23).

Then legislation started coming in and I am not saying it is wrong or right, but with legislation comes responsibility and ownership and officers now, especially younger ones who have been through training school recently, come out absolutely petrified of doing a stop check. Unless the guy is wearing a stripy suit and carrying a bag with 'swag' on it and has just escaped from prison, they won't go near him. So they are absolutely petrified of doing any stop checks. A lot of them just can't do it, they almost need the evidence for arrest before they will even go near them, which is one of the reason stop searches have gone down. (BPS/B/SI/12)

I think because of the Macpherson Report people are probably doing it less where they'd probably get some good results from it. I've heard it said that new people coming into the service sort of seem to be worried, there seems to be a decline in the use of them [stop and search powers] but then that's just people frightened. You know, they are not 100% sure of the powers and sort of rather than risk getting into a problem, they don't do it. Now that the organisation as a whole have changed it's policies in different situations. Probably not always in a good way, you know probably things that could be addressed aren't addressed now because we don't wanna be seen dealing with that in an inappropriate way or whatever. (BPS/A/PC/7).

I went to a meeting at the force HQ and they made it clear that if there were any problems with its use you would be held personally responsible. I think that people thought that if that is the case then why bother. (BPS/E/SGT/25).

There was considerable anger around how senior officers had adopted the Macpherson agenda. Officers believed that they were being pressured into doing stop and search but were then expected to take responsibility for any problems. In contrast to the policy and training materials officers believed that stop and search numbers continue to be used as a performance indicator. Officers perceived themselves as victims of an externally imposed agenda that has little relevance to their force and an unsupportive management:

My personal opinion is that they want us to use PIs [PACE section 1 stop and searches] as a performance indicator but what is preventing them is the pressure of infringing human rights. So the management line is don't do stop and search without the criteria. Yet the reality is it is a performance indicator. It will be taken into consideration for jobs and things. We want you to take the risk without backing you, hence the massive drop. People aren't playing the game. Basically, I think people look for... This is not supposed to be a key performance indicator but it is. It forms part of the four months assessment. They would argue that it is not a performance indicator but it is something that is looked at because whatever people say it is a major tool in disruption, especially with persistent offenders and because of this importance it will always be looked at as a performance indicator. (BPS/F/SGT/27).

People don't do stop and search generally. We don't have enough powers; it has gone full circle, not enough power now to get the job done. The officers won't search. I have heard numerous times "I won't search him because he is black and I will get a complaint." Where is this tape going? Cause now I have got to worry about saying things like that [I repeat guarantees of confidentiality]. I don't want to get a complaint from a search. A complaint will come in and the complaints department will investigate it even though they know that this is a load of rubbish. When people turn around and say a police officer, i.e. me, has searched this bloke here and said what is supposed to be said. There are other officers and they all

backup what the officer says, but they still have to go to every degree to investigate it. Why don't they just turn around and say, "Thank you very much, but that is a lie." (BPS/F/PC/29)

Officers were also keen to offer explanations for disparities in stop and search figures.

Although officers also noted different offending profiles among ethnic groups, other explanations differed from those raised by Amberham officers. Officers mentioned lack of adequate descriptions, manipulation of statistics and stop and search reflecting society's prejudices:

Something else, that I think the bosses wouldn't like me saying, but my view on stop search is that a lot of the problems rise from it because certain types of crime are more likely to generate stop searches. Take the offence of theft from motor vehicles, 9 times out of 10, the villain involved will break into the car, get away with it and nobody will see him. So there is never any witness phoning in saying this guy who is described as such and such has done this offence. Whereas robbery and theft from person, whether they are stealing mobile phones or something, there is always going to be a victim who has seen the person responsible. So that description will be put out by the Control room. And this is the contentious bit; certain types of crime are more prevalent amongst different ethnic groups. Like white criminals they are across the board, they tend to dabble in everything, whereas black criminals particularly in Brookshire - it is more violence, drugs, robbery type offences. My own view is that this sort of ethnic divide in the people who are searched is in part due to the fact that the sort of offences that they are committing tends to involve a witness or a victim therefore you get a description out, therefore officers will be looking round for whatever described person it is. I always think predominantly and I don't know what the statistics are, with street robberies there are a lot of black youths involved in it and I think that is what has lead to the skew in the figures, in part... If you have got an ethnic group who are predominantly involved in that sort of crime, it is that ethnic group whose description is going to be put out more than another and then they are the ones that are going to get searched. (BPS/A/PC/5)

If you have an image of a street robber and we get there quickly – the officer that attends is quick to get a description. If the offender is a visible ethnic minority, the officer takes less description before passing it out on the radio. They would take more of a description of a white person. The consequence is that is that officers in an area will stop check on the basis of more limited descriptions. I have seen very little bad practice – so at a loss at how to explain it otherwise. I am concerned about it. Of course, there is also racism in wider society. Like for example, there is a posh village in south Brookshire and a dad was picking up his daughter from school. He was black and obviously people hadn't realised that the little girl was mixed race. A number of parents called the police to say there was a strange man hanging round the school and he had picked up a child. The police were acting on prejudices of the people round them. The police then stop/checked people round that area matching the description. (BPS/E.SGT/22).

Stop and search use

Force statistics at the time showed that on average per year the force conducted 12,000 stop and searches, this breaks down to 522 per year and 2 per day in each area command.

Officers estimates of their stop and search use confirms this low usage. Most officers noted that they were unlikely to do more than one stop and search a week and the average was much lower. The lack of observations and constrained research environment resulted in little time spent in each area to develop an understanding of the context in which officers operate, working practices of stations and command areas and personnel. I therefore cannot explore the theme of area difference in this data. Instead, I consider stop and search use generally across Brookshire, noting factors that may be influenced by the local area.

Again, the explanations provided by officers can be coded into the follow categories: information/intelligence, behaviour, time and place, and appearance. Senior officers stressed the importance of an intelligence-led model of stop and search, which was also emphasised in the training:

We work off the National Intelligence Model, yeah, they took a fairly simply concept and made it nice and complicated, with all the various names and phrases. But the principle is very basic—you take all the information you get about the environment in which you police in, you should analyse that sensibly, ask yourself questions about it and then use that to base your policing responses. Stop and search is a valid tool. It is one of the many tools in the armoury that you can use to try and do something. On one level it is something that every officer can use as a response to a particular incident, they can use stop and search perhaps to help them solve that particular incident. On a more planned basis, stop and search in this context is about helping them to understand where it is logical to stop and search. It is about making sure that they are aware of the crime trends in the area where they are policing. So that if you have a burglary problem with a particular type of property likely to be stolen and concealed about your person and it was happening at a particular time of day and then they see someone behaving in a particularly suspicious manner in an area where it is happening and they are making that judgement about if it is appropriate and “have I got the right level of suspicion to exercise my powers?” It is about equipping them with the understanding of what is happening to help them make the proper and logical decision. (BPS/DCI/1)

This terminology had not been translated to the officers on the ground, who rarely spoke about ‘intelligence’ in regard to stop and search. Yet, like officers in Amberham, officers were most likely to report making low-discretion stops based on information from the public:

To be honest with you it's not very often here. It's generally in response to... probably phone calls where you've seen... We've had a phone call about someone acting suspiciously around the property or where there's been a vehicle break or a burglary and a brief description is passed on and then it's a case of going out looking for people that are similarly described, it's generally then that a stop search takes place in this area. It's not particularly proactive in that respect it tends to be a reactive stop search. (BPS/B/SGT/13)

We don't have time to do proactive policing but obviously a lot of the jobs we get sent to – it might be that Control get a call about someone acting suspiciously around cars or something of that nature and that would generate a stop search. (BPS/A/PC/4)

The last one was a report of males acting suspiciously in a shop. Shoplifting basically, the shop called us, so saw them in the street and so took them out of public view and searched them, went through GOWISELY. Found no property but a change of clothing, reversible jackets and things. Went through the ID procedures and they turned out to be two absolutely prolific shoplifters. (BPS/E/PC/23)

There was a sense that officers use (or at least were happy to talk about) stops that are made on ‘safe grounds.’ Stops that are in response to calls from the public were described as having clear grounds:

Descriptions. I wouldn't just pick on anybody, there have to be grounds for me to stop somebody because I don't want to lose my job and it is as simple as that. It doesn't, matter what colour they are or anything like that. It is basically that the public phone up and say “someone is messing around with those cars” or “that person over there is drug dealing, I have seen him stuff drugs into a bag and put them down in the alley.” (BPS/B/SI/12)

I don't care what colour people are. It's not relevant. You have a feeling and you just see things that perhaps the general public wouldn't. You see it but it doesn't necessarily fit with the grounds. I mean sometimes we get a description from the public of someone acting suspiciously. If they think it is suspicious than that should be enough really. (BPS/F/PC/30)

Officers thus describe their most common use of stops as based on witness descriptions or calls from the public regarding someone ‘acting suspiciously.’ There is little analysis about what ‘acting suspiciously’ means in practice and many officers noted the poor quality of descriptions they are given:

Descriptions of the caller play a vital role. However often the descriptions aren't very good because incidents happen so quickly the general public see only one factor or they'll just see a group of 'this' age bracket. And people notice skin colour which is quite common. And the general uniform tends to nowadays be a hooded top, baggy jeans and trainers (laughs). (BPS/A/SGT/8).

*It depends. Our Control room are terrible. We have a call-handling department who take the initial calls, they pass it on to the Control room and they will pass it down to us. The call handlers are notorious for taking so little. It is usually that by the time they have passed it over to the Control room, the Control room is having to phone back the victim to get a proper description. Obviously, ethnicity is something that most people will notice but stuff like clothing they are not very good on. You are not going to be stop searching someone just on their ethnicity, so you want some description of clothing or something else to... But then again it would depend on the time of day also if you are in the middle of *** and you are looking for an Asian male in blue jeans, it doesn't matter how recent it is or how near he is to the scene, there is just going to be so many fitting that description that you are really not going to do a stop search. But if you get a description of somebody in a Nike top with a hood on it, you are starting to get there. (BPS/A/PC/5)*

In practice, poor descriptions could lead to discriminatory stops. Officers rarely mentioned using more detailed knowledge based on crime trend analysis or information about persistent offenders in structuring their use of stops. One officer mentioned the targeting of prolific offenders:

*A typical one from probably a month ago – a car at 4 o'clock in the morning with four males in it. One of them is one of our targets, a prolific offender, driving a car that was not registered to anyone in the car. Everyone in the car gave a different story as to how they got the car, where they were going and why. One gave a false name too. Because of that and crime analysis we made the decision to search the four people and the car. All were compliant, all were separated – this was on High Street ***, separated and spoken to. I think a couple of items were recovered from the car and a small quantity of controlled drugs. So all four were arrested. (BPS/E/SGT/25).*

Yet this was not mentioned in other interviews. There was very little information to suggest that intelligence, briefings on specific prolific offenders or targeted initiatives

aimed at hot spots were taking place. More often officers mentioned the stopping of known offenders:

Very, very useful. It is a deterrent. We use it to stop the people we know are involved in crime. Local nominals are aware of the power and not aware of the restrictions on the police. The fact that we can and they may be stopped and searched is a deterrent. It stops them carrying stuff to commit offences on the street. To me it is invaluable and I don't use it enough because of the restrictions put on it. I know that is across the board. (BPS/F/PC/30)

The same tautological explanation is used – stopping people becomes based on the fact that they may commit a crime, not evidence that they already have. There was not the same dialogue of ‘keeping people on their toes’ as was prevalent in Amberham.

Officers were also likely to mention behaviour that they deemed suspicious as leading to stops. The following examples illustrate this point:

An example of one the other day – young lad on his pushbike, a BMX thing, riding up and down looking into cars. As I come down the street I see this lad looking into cars in a dead end street. Now alarm bells are ringing – okay it is a school day and he doesn't look old enough to be out of school so what is he doing out on his pushbike looking into cars for a start. When he seen the police he then made off quick on his bike and got away. We did a patrol of the area, lost sight of him, came back to where we first and there he was again doing exactly the same thing. So again alarm bells are going, “what are you doing down here?” Stop him, have a word with him, just obtain a few details, his name, what is he doing, shouldn't he be at school? And then explained to him that because of his actions, what he is doing, because he made off from us when he seen us that we are going to carrying out a pl search and obviously explain, obviously he is going to know we are the police but explain who I am, what station we are from. Just do a search there of him, check all his outer clothing, his pockets, get him to turn his pockets out. He was quite happy to go along with it because he had nothing on him anyway. He then gets a copy of the pl form if he wants one, which he did, duly signed it and off he went on his merry way. (BPS/B/PC/11)

Officers commonly mentioned making section 23 (misuse of drugs) stops after smelling cannabis. Another category of stops were based on time and place, if it was unusual for someone to be in a particular place at a time:

On night shifts generally we are more proactive than we are during the day because obviously there aren't so many jobs to go to. So you get more of a chance to just tour round and look for things. Obviously in the middle of the night, because there

isn't a large residential population, if you are round the back of a shop or something, there is very little excuse to avoid being searched because they are few good reasons for being there. (BPS/B/SI/12)

Officers again spoke about 'high crime areas,' although this was not linked to strategic targeting of hot spots but instead often personal perceptions of an area that was high in crime so persons in that area were more likely to be involved in crime.

The only thing that I would add is about hot spots. There are some high crime areas that we know are being hit. So if we are out in these areas, particularly at night, and we see individuals we are going to want to talk to them. Particularly, if they have evading behaviour – like it they duck into a garden and then ten minutes later come out or change direction when they see us, then would use this as grounds to start a discussion. (BPS/D/PC/19)

There remains a percentage of high-discretion stops that are based on speculative grounds that officers most often describe as 'gut feeling':

One example of what I was saying about not having enough powers like the search that we did about four or five weeks ago. It was 3 in the morning, we saw two lads walking away from a shop window. When they saw us they sort of changed direction, walked towards a dead end and then changed. We didn't have enough for a search – it was thin – but my feeling was that it just wasn't right. It's that hesitation when they first see you. Law abiding people see you and walk on because they have no reason not to, someone up to something hesitates just a fraction, changes direction, trying to figure out what to do to avoid you. But this isn't enough grounds. Anyway, so my partner took one lad and I took the other. They were compliant. I searched him and he had gloves, a light off a bike and a plastic bag. Not enough to get him for going equipped but then I looked over and my partner had just pulled out a crowbar. What we always do is put the stuff we find on the roof of the car. So I arrested him. The other lad punched my partner and ran off. We got him later. (BPS/F/PC/28)

Some of it is street culture, Asians, Sikhs date by hanging out in cars. Either they are couples or groups of girls or young men, who aren't allowed to hang out publicly. A lot of them tend to have flash cars- BMWs, Audis. I wouldn't be doing my job if I didn't think, would I? Have to stop and talk to them and eliminated them from my enquiries. Once I know their face, know the person, I won't need to stop and search them again. Stopped a young guy the other day – he wasn't doing anything – just needed to check and now I know the face and the car, I won't need to stop him again. (BPS/F/PC/29)

Section 60

Section 60 is rarely used in Brookshire and appears more closely allied to intelligence on specific incidents where violence is expected than was the practice in Amberham. A deputy area commander explained:

Very rarely is it used unless there is a very good reason for it. The last one was issued, if I remember was this weekend and that was because there was tensions again between the Somalian [sic] and the West Indian, Montserratian [sic] communities and the Asian communities. Sometimes things happen that raise the tension levels and we have to address it. They had intelligence that all the communities were arming themselves and a section 60 was issued to ensure that persons who were acting in a certain way – hanging around the area, watching other groups, not going about their normal business, you had the section 60 power to search them for weapons in that area. Usually it is in response to intelligence for the safety of people in the community. That is the last one – but I can't remember the one before that. (BPS/A/SGT/3)

Other examples where section 60s have been authorised were on Friday and Saturday evenings when disorder was expected following the pubs and clubs closing, football matches or animal rights protests in the more rural areas where fox hunting protests were common. Only officers in the inner city areas were likely to have experience of section 60s or those with public order training who were drafted in from other areas for football matches. As was apparent in Amberham, once section 60s were authorised, it was unclear that officers were following the intelligence and stopping those likely to be involved in the type of activity that the power had been authorised for. Instead, officers were using the powers to search known offenders or pursue other agendas:

*When a section 60 has been in force it's usually around the time of a football match and such things like that. I have used that power. It was a case of, is this going to the press? Ok. All right. It's a case of when the section 60 power is in force was if I see someone that I know, or I've been made aware of that's working on the area committing crime on the area, I have personally used a section 60 to my advantage too when I've seen a known sex offender. On the *** area, usually we wouldn't have that power to search him because he's not looking at people, he's not looking to steal things, but it's a reason, if you wanna put a phrase on it, it's a reason to tip him up (laughs) and to make him aware that you know who he is, you are watching him and yes ok then I've got the power to search him when I see him - he doesn't*

know the difference between a section 1 and a section 60. It's effective in that I've not seen him again (laughs). (BPS/A/TR/6).

It was very effective because it is easy for myself as a policeman to do it under section 60, you don't have to find the grounds, it is carte blanche, you can do it and it is more effective that was because you are not questioning yourself – "Can I? Can't I?" Its just there and you can stop the people that you see need stopping. (BPS/E/PC/24)

Conduct

In contrast to Amberham, every officer interviewed reported using the GOWISELY mnemonic to structure how they conduct stop and searches. This was often followed with a description of the importance of completing the form and giving the person a copy:

We are very wary about stop and search use now. And we all think twice maybe three times before we use those powers. There are certain things that you have to do. You have to have the grounds first before you even think of stopping and searching someone. You have got to introduce yourself, where you are from, the reason for the search, grounds, object and the fact that there is to be a written record that they can have a copy of. If you want the mnemonic – GOWISELY – the new bit of legislation. I always follow the book, it is written in there if you can't remember it off the top of your head. (BPS/E/PC/26)

I went up stopped and chatted to him explained what I was doing, explained the powers that I've got to do it that its GOWISELY. To GOWISELY! Went through that and then he was quite happy. Showed me what was going on in his pockets and everything else and he was on his way. (BPS/E/PC/23)

It is interesting that this part of the agenda has been institutionalised yet the use of intelligence in structuring stops has not.

Summary

Part I of this chapter has laid out the national policy agenda on stop and search coming out of the Macpherson Report recommendations and continuing concern about disproportionality. Emphasis was placed on improving the recording of stops, making stop and search 'intelligence-led' and improving how stops are conducted. Overall, it was hoped that this approach would increase confidence and reduce disproportionality.

The data from Amberham Police Service shows that as national policy is translated into local force policy it is undermined and loses much of its original intent. This happens at the local area level; the local community context, established working practices and priorities and personalities impact on how policies are mediated. This is transmitted to officers on the ground whom then have personal agendas and working rules that dictate how they operationalise the policies.

A number of themes emerge from the data. There is an ambiguity about what is meant by ‘intelligence-led’ stop and search. Officers often describe vague descriptions of ‘suspicious’ people or incidents as intelligence as opposed to detailed knowledge of crime patterns in an area or concrete information about individuals involved in crime in specific localities. It is also clear that officers are using stops to gather information, that they term ‘intelligence.’ Officers described situations where they had stopped somebody on the basis that they had not seen them before in an area or that they were a known offender. What is being defined as ‘intelligence-led’ stops were actually stops made on the basis of the intelligence that they might produce.

The high use of section 60s in some areas within Amberham undermines the threshold of reasonable suspicion as developed under PACE. In some areas section 60s appear to be authorised on a continuous basis in response to general crime problems in the area, such as street robbery and armed criminality, as opposed to specific incidents or intelligence. Although the crime problems are similar in adjoining areas, there is a large variation in how often they are used. The discretion is thus held by the senior officers who authorise the section 60. Once a section 60 has been authorised, officers are using stops at will (often

based on stereotypes and generalisations) as opposed to stopping target offenders involved in the crime the power has been authorised for.

There remains confusion over what constitutes reasonable suspicion. Thus stop and search is being used for different reasons and with different thresholds of suspicion across different areas within the force. As arrest rates coming out of stop and searches remain low, stop and searches become justified by their deterrence value. This is a tautological justification – a person might be about to commit a crime, so the stop is justifiable on that basis. Hence every stop is justifiable. In some areas, ‘reasonable suspicion’ is being translated into ‘area-based suspicion,’ in which areas are labelled ‘high crime areas’ and this becomes the major ground on which stops are then made. This is not specific to a ‘hot spot’ or particular location which has had a spate of recent crime, instead suspicion is being generalised across the whole area. This area suspicion becomes racialised suspicion in areas that are predominantly minority communities.

As in Amberham, the data from Brookshire shows that the national policy agenda is mediated through the local force context and loses much of its original intent. The changes to stop and search were directly linked to the Macpherson Report and the stopping of ethnic minorities, neither of which were perceived to have as much relevance to Brookshire as other forces. There is palpable anger around what is perceived as an externally imposed agenda. Officers perceive force managers as pressuring them to conduct stop and search while refusing to back them up. Thus they report making mainly ‘safe’ stops based on calls from the public to avoid complaint. There remains considerable variation in the threshold of suspicion between officers and it is unclear that reasonable suspicion is always met. Despite training, officers are still unclear about developing grounds and there was little

evidence that stops were ‘intelligence-led.’ Instead, officers seem to have embraced the changes in the conduct of stop and search, and continually mentioned GOWISELY as structuring their interactions. It is likely that this is the clearest and most practical part of the agenda, with the clear benefit for officers of improving the quality of their interactions, whereas the other areas are problematic and seen as leading to trouble.

ANALYSIS OF US FINDINGS

7

Chapter 4 outlined the major court decisions that form the body of law regulating the uses of stop and searches in the US¹². These form the national legal context in which police agencies operate pedestrian and traffic stops. The decentralised nature of US policing means that the state context plays a large role in regulating everyday police practice. This incorporates state law and court decisions, city initiatives, agency policies and practices and a local environment, through which the national and force policies are mediated. Part I of this chapter will briefly review the force-wide policy context in New Town and explore the impact of this context on officers' use of stops. It will then look at the local policy environment, considering officers' use of stops in three areas.

Part II of this chapter looks at how the national law is interpreted in the second US police force, the Greenville Police Department. It then considers how stop and search is used in two policing areas, to explore the theme of area difference that was evident in New Town. I do not reflect on the racial profiling study that was conducted in Greenville or explanations of stop disparities, as these areas did not emerge strongly in the data.

¹² An extended summary of court cases forming the body of regulation on stop and search can be found in Appendix 4. This was taken from the training materials given to officers in both forces during their initial training and updated regularly to reflect new national and state court decisions during their service.

Part I: New Town Police Department

State context

The *Terry* decision has been codified in state legislation and court decisions. The state court has recognised three levels of police-citizen contacts:

Casual Encounter	→	No Justification
Investigative Detention	→	Reasonable Suspicion
Arrest	→	Probable Cause

Police officers may make *Terry* stops or investigative detentions of persons they encounter under circumstances which reasonably indicate that such person has committed, is committing or is about to commit a crime.

Officers may detain a person to ascertain their identity and presence in an area. Detained persons must identify themselves but may not be compelled to answer any other questions. The law of the state permits police officers to ask for ID during a *Terry* stop but has not ruled on arresting people who fail to produce ID. Department policy suggests that officers are 'selective' in who they therefore arrest for failure to show ID.

No person may be detained longer than is reasonably necessary to effect the purpose of the investigation and in no event longer than 60 minutes. Such detention should remain in the place or vicinity of the place where the detention was first effected. During a detention officers are required to use reasonable force (in the form of pulling a weapon, handcuffing, or placing someone in a police vehicle) while they conduct their inquiries, although they must be able to articulate why they have done so.

If any police officer reasonably believes that the person whom s/he has detained is armed with a dangerous weapon and is a threat to the safety of the police officer or others, the police officer may search the person to the extent reasonably necessary to ascertain the presence of such a weapon. If the search discloses a weapon or any evidence of a crime, such weapon or evidence may be seized.

The ‘plain feel’ doctrine states that if during frisking a person for weapons officers feel an item from the shape and feel of which it is immediately apparent that the item is probably contraband, the officer can legally seize it and the person can be arrested for possession of that item. If the officers continue feeling or frisking after it is clear that there is no weapon or cannot immediately identify an item as contraband but remove it anyway then anything seized is a Fourth Amendment violation and may be suppressed due to being ‘fruit of the poisonous tree.’

The City of New Town has a number of city ordinances to ensure public order on the streets. These include misdemeanours such as misuse of a bus stop or park bench, having an open alcoholic drink within 1000 metres of any shop selling alcohol, trespassing, loitering, being inebriated in a roadway or spitting in the street. This is in addition to traffic law which include the offences of jaywalking (not crossing at an authorised crossing), crossing against the stop signal, and walking in the road. Officers that see anyone breaking these ordinances have probable cause to issue a citation or arrest the person and can use that probable cause to investigate for further crimes.

All of the above rules can be circumvented if the officer asks and is given consent to search a person for weapons or contraband. They do not have to inform the person that they have the right to refuse.

A. Area A

Area A covers an area of 15 square miles which include the downtown area of New Town, the business district and low-income residential areas that have high ethnic minority populations. Officers describe the area as a 'transient area,' with major crime problems in the area being drugs (most prominently crack cocaine), robberies, assaults and prostitution. Area A has an informal policy of using stops aggressively. Officers are encouraged to make lots of stops and use the city ordinances to stop for small offences, often in the hope of discovering larger crimes. A sergeant explains:

We use a lot of stops in area A. Aggressive law enforcement is extremely important for crime control, crime fighting, prevention, whatever you want to call it. Law enforcement could include stopping and frisking people, it is just getting to know people in your area. I think that it is very effective. (NT/A/SGT/9)

Officers use self-initiated stops frequently; officers average around 20 per day and evening (swing) shift and 25 stops during the over-night graveyard shift. A typical example is:

*Every 15 minutes. I probably do 20 a day. Where I work on*** Street, probably 90% of them end up being a pat down for weapons. We may not go into their pockets and do an actual search but a pat down for weapons is almost always going to be done. (NT/A/PO/6)*

This was confirmed during my observations. On a busy swing shift where the officer was ordered continually to call after call, he still made three stops. During the graveyard shift, when calls for service were much lower the officer had conducted 8 stops within the first two hours of the shift.

In area A, it is the law rather than administrative or bureaucratic controls that provide the main contextual resource for structuring how officers think about their use of stop and search. Officers receive intensive training in the Academy and throughout their careers on ‘search and seizure’ laws. This is supplemented by departmental bulletins when new court decisions are made that will impact on officers’ stopping practices:

We go through hours of training every year to make sure that we are up-to-date. The laws and things like that are disseminated through the department pretty well. Once there is a new law created in the Supreme Court or a new policy that the Department has created because of something that has happened, everybody finds out about it pretty quickly. We are responsible for 40 hours of training a year and some of that is going to be on policies, on racial profiling, on making correct stop and searches. (NT/A/PO/7)

As a senior officer explains:

The issue isn’t what happens out on the street; the issue is what happens when it gets to court. (NT/DC/1)

When describing their use of stops or explaining their actions officers referred continually to what is permissible under the law. Thresholds of suspicion such as reasonable suspicion and probable cause were mentioned repeatedly throughout interviews and observations.

One sergeant explained after conducting a stop:

Under reasonable suspicion – the law in New Town says that I can detain someone for 60 minutes. I now look him up on the computer and see that he has been arrested for selling drugs on this area. I’ll ask if he has any weapons on him. He says “no,” “do you mind if I check?” “No.” So I pat him down and I feel a baggy, not a weapon but in plain feel it feels like a crack pipe. The law says I can go in and retrieve it – I now have probable cause for an arrest. You couldn’t go to court with one rock of cocaine, how could you say that felt like a gun? A pat down is not a search. Reasonable suspicion is good but you have to be able to articulate the reason. (NT/B/OBS/3)

Officers often spoke with a reverence for the law and the Constitution:

If an officer stops without reasonable suspicion then it violates the Fourth Amendment of the Constitution. It is a right held very near and dear to people in this country and it is an abuse of police powers. You need three things –

reasonable suspicion, probable cause or a person's consent, otherwise you shouldn't do a stop. (NT/A/SGT/9)

I don't search a lot of people unless they are under arrest. I am a big believer in Constitutional rights, people have the freedom to walk down the street and not be hassled by the police. But if I have a good reason to stop you, I will. (NT/A/PO/5)

Officers perceive the law as the major source of constraint over their actions, with the courts as the ultimate arbitrator of bad practice:

If you make an arrest it is going to be supervised very heavily by the courts and whether you violated someone's Fourth Amendment rights. Other than that it is really not supervised by anybody other than yourself. That comes under the integrity thing. (NT/A/PO/6)

It's the law. Pretty much we know if we do a bad stop and we get something out of it and we go to court, pretty much everything that we got is no longer useful. Or if you infringe someone's rights you might end up with a law suit. So pretty much you can't do anything wrong or in the long run you won't get them off the streets. (NT/A/PO/7)

This quote recognises not only the power of the courts to suppress evidence or dismiss cases but also the growing concern with civil litigation. Several studies illustrate the increase in the number of lawsuits and growing success in obtaining settlements or judgements against the police and the increasing number of officers (of all levels) who worry (sometimes excessively) about civil liability (Kappeler 2001; Alpert and Dunham 2004). Officers were more likely to mention the possibility of cases being thrown out if they conducted an illegal stop but several mentioned the threat of civil litigation. In reality, the courts rarely suppress evidence because it has been obtained illegally (Fyfe 2004) and often make exceptions for 'good faith' mistakes (Heffernan and Lovely 1991). The New Town Police Department has no system to measure how many cases were being thrown out due to illegal activity by officers and trace it back to individual officers.

Officers articulated the perceived legal constraints in two ways. The law requires them to articulate the threshold of suspicion on the basis of case law. Thus officers structure all discussions of stops by providing factors that would constitute reasonable suspicion or probable cause. Secondly, officers articulate that the law curtails the scope and extent of stops. Several officers mentioned knowing that people were carrying contraband but not having the power to conduct more than a cursory stop and frisk to find it.

I would say that sometimes the main problem is your limitations. Stop and frisk doesn't allow you to search. So even if you know that he has drugs in there, if you can't immediately go "that's a crack pipe" from touch, then you are stepping the boundaries of the law. So it is sometimes limiting because you know that there is something else there. A lot of our drug addicts will hide it in their bra or trousers and you can't go in and get it so it can be somewhat limiting. For stop and search you actually need a lot more proof. If we saw them put it there or if I feel a baggy and it is obvious to me what it is from my training then I can go in and get it. But these guys know how to hide it. That is why every gangster, as we call them out here, wears like three pairs of pants. You just have to accept that is what the courts says; it's not worth risking it (NT/A/PO/5)

The following observation from the fieldwork points to the fallacy of these constraints:

6.30pm Three young Latino men standing around a phone box. We pull up and officer asked the three men to stand in front of the car. He doesn't ask them for consent or articulate any suspicion to them – just tells them what to do. Officer is polite. One at a time, he gets them to hold their hands behind their back, holds their hands together and pats them down – checking the waistbands, pockets, outside of trousers, socks, pulls out wallets and throws them on the bonnet of the car. Once he has finished, he asks them to sit on the curb. Then asks all three to open their mouths and shines a torch in to see if anything is in there. Officer takes their names, leaves them sitting on the curb as he gets back into the car to check them on the computer – none have warrants – so officer tells them they are free to go.

After the stop, the officer explained: "I would have articulated that stop by saying it is a high crime area, particularly for narcotics. Quite often you find drugs in their mouths. Rather than swallow it they think that they can get it past you. It is very common for people involved in narcotics to carry weapons, usually knives but sometimes guns. And they were all wearing thick baggy clothes that could be concealing a weapon. If during a pat down you feel something you believe is a weapon – you can pull it out to determine if it is a gun or whatever. For example, that middle guy – I found a clock in his pocket but thought it could have been a block knife – so pulled it out. The law says that if you are doing a pat down for weapons but then feel something that you immediately recognise like a crack pipe or a bag of weed – you can get it out. But you cannot feel around the object to

determine what it is. You can legitimately make a mistake and think that it is a knife but it is a crack pipe. If you pull something out at the same time as a weapon – you can use it.” (NT/A/OBS/1).

The officer articulates his reason for making the stop based on the fact that a group of young men were hanging around a phone box in a ‘high crime area’ known for narcotics sales. A stop and frisk was conducted on the basis that the officer’s experience has led him to believe that it is common for those to be involved in drug sales carry weapons, therefore he conducted the frisk to ensure his safety and clearly articulates the boundaries that the law sets around seizure of contraband while you are searching for a weapon, thus no individual suspicion was present. The officer went on to conduct a cavity search by asking them to open their mouths and shining a torch inside; he articulates this by saying that drug dealers often hide drugs in their mouths. To conduct this search the officer needed probable cause, which was not present, yet since the stops did not result in arrest, the courts will never be called on to judge the legality of this action. Officers employ standard descriptions of suspicion to justify their actions, such as an individual being in a high-crime area, wearing baggy clothes and behaviour on seeing an officer. The following example shows how this language becomes standard regardless of the situation:

11.10pm. Two women in an alley walk the opposite direction when they see the police car. Officer flashes lights and pulls them over for a stop. He asks them to stand in front of the car and then why they are there. It is a girl (about 20) and her mother (both white). They tell the officer that they need to give a friend some money but needed to get change first. The officer says that it is not a safe area to be hanging around in trying to get change and points out that there is a Seven-Eleven down the street. Officer puts on plastic gloves and asks them each for consent to pat them down. They both say “yes” and he proceeds to pat them down. He finds nothing. Checks both their IDs (they come up on the computer and are not wanted), warns them about the area and points them in the direction of the Seven-Eleven. Officer watches them walk away and then continue to look round the area to see who they were trying to buy drugs from.

Afterwards the officer explained: If they hadn’t consented I could have patted them down anyway. I had probable cause – the fact that they were trespassing; this area is covered under a no-trespassing order. Or reasonable suspicion – she has \$20 in her hand in a back alley in a high drugs area and her mum appears to be under the

influence. I am not racial profiling or anything but they don't fit the profile of the area. The daughter was articulate but their behaviour was suspicious – they both walked in the opposite direction when they saw me giving them time to put down a crack pipe or something, and their reasoning was getting change from a random stranger in a dark alley when they should have gone round the corner to the Seven-Eleven. I had reasonable suspicion for a frisk because they were wearing baggy clothing in a high crime area – so I could have easily articulated it but they consented. (NT/A/OBS/2)

Senior officers within the department place significant emphasis on the chain of command, in particular first line supervisors, the sergeants, as providing the main internal regulation of officers' use of stops.

All we can do at our level is to enact policies and procedures and best practices that we want these people to follow, now if they chose not to then we have got to hold them to account. That is where the first line supervisor comes in, they have to step up to the plate, they have to have the courage to make people to the best of their ability comply with our policies and procedures and Constitutional ethics. (NT/DC/2)

They stressed in particular the importance of sergeants in monitoring the use of their officers' stops, usually through direct observation during calls. Sergeants described their supervision of stops primarily as monitoring the radio and computer so that they could see what types of calls officers are being directed towards and when they make stops. They are required to attend the most serious calls and often turn up unexpectedly at stops to observe their officers or provide backup. One sergeant described this role in the following ways:

Spot monitoring, you know, you roll up on calls and basically that would be considered field supervision and review reports and finally answers to solicitations, basically if an officer calls you up and solicits advice or is looking for some counsel oftentimes we receive that information over our cellular phones. They will go ahead and describe the situation and we will recommend a course of action. (NT/A/SGT/9)

The mobile technology in the New Town police cars means that sergeants report spending most of their shifts on the road, directing officers to calls and turning up at calls or stops. This was confirmed during the observation shifts where it was common to see the shift

sergeants turn up at calls or stops. Sergeants are also responsible for reviewing arrest reports that include information on the offence as well as the demographics of the person arrested and any reported use of force. Statistical information about officers' use of stops is available at the Communications Bureau (as all stops are called in and recorded for officer safety purposes). Yet it is not standard practice to provide all sergeants with print-outs on their shifts stopping patterns and no sergeant reported asking for or using these records.

Officers rarely mentioned sergeants as a source of supervision over their stops, although some noted:

Unless the sergeant is there – it is not [supervised]. Well, my sergeant because I have a very active sergeant he is around quite a bit, I know other sergeants that aren't going to come to a stop unless you are requesting another unit and he is the closest unit. We have training all the time on procedures and when you should and when you shouldn't do something. Supervision really comes from above in the training where they are constantly telling us this is the way it is and you are not going to this. It is up to us to be smart enough and use common sense in knowing who we are dealing and how to deal with them. (NT/A/PO/4)

As the officer mentions, sergeants were only perceived as a source of supervision if they are proactive and most officers had stories of sergeants that were content to monitor the radio and not turn up to calls. No officers recalled sergeants looking at their patterns of stops and arrests and questioning them. Instead the departmental emphasis appears to have been put on continuous training and legal reminders. This leaves considerable room for officers to act outside departmental policy. Without adequate administrative control mechanisms officers are forced to draw from other working rules and assumptions to make quick operational decisions.

The most common use of stops in area A are those based on consent (that circumvent the need for reasonable suspicion). Officers have usually developed probable cause based on a

misdemeanour such as jaywalking or misuse of a bus stop, so that if the person refuses they can conduct the stop anyway. One officer explains:

I always ask for consent that is probably the best way. Down here most people give their consent. A lot of people don't think that you will find it or they just don't care- they will tell you, "I have a crack pipe in my pocket." (NT/A/PO/4)

Once a person gives their consent there is no need for the officers to describe what suspicions have led to a stop. It is likely, with no suspicion present and only the observation of a misdemeanour, many of which most people cannot avoid doing, that these stops are based on stereotypes and generalisations about certain groups. The use of pretext stops based on the observation of misdemeanours was also common practice in this area. Officers use these stops in the hope of discovering larger crimes. Two examples from the observations follow:

12.00am Officer stops a couple who have crossed a road and are walking towards the main street. As getting out of the car, the officer explains that they jaywalked (crossed the road not at a crossing); over last hour we have passed at least 5 people who have jaywalked in front of us. Officer is polite and explains to the couple that he stopped them because they jaywalked right in front of the police car and were coming out of an apartment building well known for drugs. The couple explained that they were going to the store. The officer asks if he can frisk them. They clearly looked disturbed but both grudgingly say "yes." Officer puts on gloves and frisks them both then asked for their IDs and checks them. They have nothing on them and no criminal record. The man was clearly annoyed and said that he had lived in New Town his whole life and didn't know that jaywalking was an offence. There seemed to be no reason for the stop. (NT/A/OBS/2)

*1.20am – Officer is now responsible for answering calls for service but there are none waiting. We drive back towards downtown. See a woman in jeans walking away from the ***. "Like see there – that's a whore. Forgive my language." We drive round the corner and park up. The woman crosses the road on the red hand – "now I have reason to stop her, when we stop people we are basically looking for more. People get really aggravated when you tell them why you are stopping them". Officer positions the women next to the car and asks "have you got anything illegal on you? Do you mind if I check?" She gives her consent and the officer pats her down. She warns him that she has tweezers in her back pocket. Officer pull out a condom, alcohol wipes and chapstick from her back pocket and places them on the hood of the car. He informs her that this is prostitution paraphernalia. He asks her name and checks her ID on the computer. She is a convicted felon (for controlled substances); she has failed to register a change of address. He advises her that he could write her a ticket for failure to register as*

well as jaywalking. If he sees her 'working again' he will arrest her.
(NT/A/OBS/2)

These stops are completely speculative in the hope that a larger crime might emerge during the investigation. Since misdemeanours such as jaywalking are so common, officers are selective who they stop on these grounds, thus it seems likely that many are based on stereotypes about certain groups' involvement in crime.

Officers in area A frisk everyone that they come into contact with regardless of whether reasonable suspicion for a pat down is present:

I pat them down everyone for weapons. I check everyone I come into contact with. I don't pat down a lot of people in vehicles for the most part but if they come out of their vehicles, I will pat them down for weapons. (NT/A/PO/6)

Every stop I observed in area A began with a frisk. Officers' justify this automatic frisking on grounds of officer safety. Officers are socialised into a notion of dangerousness in the area. All officers shared stories of colleagues that had been wounded in the line of duty. In the year before my visit, there had been three incidents during which officers were shot at. It is difficult to determine the level of danger associated with stops. Although in many of the situations I observed frisking seemed unnecessary, during the ten observation shifts with the New Town Police Department, on three occasions I saw guns, once a gun was pulled on the officer I was with, and twice people arrested had guns on them; I also saw six or seven knives during this time. Regardless of the danger, automatic frisks undermine the *Terry* requirement of reasonable suspicion that the person is carrying a weapon. It was also clear that sergeants and senior officers give their tacit approval to automatic frisks, despite the law:

There was a case three years ago in Florida that said that an anonymous tip that someone had a gun but that there was no evidence that a crime was afoot, then that was not enough for a stop and frisk. So we are told not to do it but in reality we are going to do it, we are not going to have someone walking around with a gun. The

reality is that officers always pat down. I tell my field recruits to just do it. You may lose the case in court but at least you are alive. (NT/A/OBS/2)

During interviews officers were asked to give a recent example of a stop or explain the reason for making observed stops. Since most stops are made based on consent and observation of a misdemeanour, the reasoning behind a large portion of stops remain obscure. The reasons given for stops that were made based on a threshold of suspicion (although many of these were still actually conducted via consent) can be coded in the follow categories: appearance, behaviour, time and place, information and the stopping of known offenders.

Officers were most likely to report making stops based on behavioural suspicion, such as the observation of an illegal activity such as a hand-to-hand drugs transaction or prostitution or behaviour that leads officers to believe individuals were trying to avoid them, such as turning and walking in the opposite direction or nervously fiddling with clothing upon seeing an officer. This example is illustrative:

*It is kind of the core of what we do - person stops. Pedestrians are usually for suspicious behaviour, you know some kind of reasonable suspicion; whether it be... being that I do work in a high drug and prostitution area, we can tell... you can kind of tell who the prostitutes are. Like if you are walking down *** you are not going to be walking down waving at cars, unless you are very friendly. Usually suspicious behaviour or we notice... let's say I see two guys do what we call a hand-to-hand, which you might just see as two guys shaking hands but we know that when they are saying "hi" it is usually a drugs transfer, especially if they cough first because they keep it in their mouths and the deal is done. (NT/A/PO/5)*

Hence stops based on observed behaviour are made to confirm or allay officers' suspicions.

Less common but also frequent were stops on known offenders for the purpose of keeping track of them:

This area is having a lot of problems with ex-felons – drugs, robberies, assaults. So we use a lot of petty laws and city ordinances to keep them under control. There is a lot of inexpensive housing around here. It is hard to get them on major crimes like drugs and robbery, so if we stop them and can see that they have a lot of

convictions for robbery and they are in an area where we are having a lot of robberies, we will arrest them for something petty, say jaywalking. Another one we use – convicted felons have to register their new address with the New Town PD. I had a bad guy last night that I wanted to get off the streets and his address wasn't updated so I arrested him for that. (NT/A/OBS/1)

You know a lot of these people we know them. A very high percentage of people who are walking around, the homeless population, and the prostitutes and the drug dealers, and the gangbangers, we know these people. We have stopped them, they know us by name, we know them by name. You can use that to build suspicion. It is always good to stop them and see what they are up to. (NT/A/PO/7)

A more chilling example involves the observed stop on an older man:

12.40am – officer recognises one of his 'regulars' (black guy -50s) and pulls up to stop him. Officer explains that he saw him drop something as we were pulling up but I did not notice this. Officer asks for consent to search "Do you have anything on you? Do you mind if I check". Officer handcuffs the suspect, telling him that he has done so because last time he stopped him he ran and so the officer had to chase him. Pats him down and searches his pockets. Nothing found. Officer then puts him in the back of the police car while he searches the area where he says he saw him drop something – he finds a crack pipe (a small glass tube that has burn marks as one end). The officer wants to take him to the City Jail – this would mean a 90 day sentence for possession of drug paraphernalia. The officer asks me what 'we' should do with him. I insist that I am only there to observe and that he should do whatever he feels is right, but he gets very insistent that I make a decision between a ticket or jail. I suggest he gives him a ticket rather than take him to jail. Sitting in the car, the officer says to the man "the detective wants me to give you a break - so I am going to give you a break and only give you a ticket, but you owe me one. You are going to give me something and if it is something good enough – me and you will have no problems anymore – you know what I am saying?" "Yes, Sir, Thank you, Mam." The officer explains that the ticket means that he will have to appear in court. If he then pleads guilty he will be sentenced, if he pleads not guilty the officer will be summons. The man explains that he has been a crack addict for 20 years but thank God has never been caught with drugs on him. He explains that he always pleads guilty and goes to jail; he never gets a fine because he is homeless and sleeps in abandoned cars so could never pay a fine anyway. The man's record showed that he had been arrested for 4 misdemeanours – two for possession of drugs paraphernalia and two for obstruction – two of those encounters had been with this officer. Officer completes the ticket and then uncuffs the man and lets him out of the car. The man is pathetically grateful and keeps thanking me and I am left sickened by the whole unnecessary encounter.

3.15 am. Officer gets a text message, then a call from another officer on patrol saying that they just stopped R*** S*** (the older man from earlier) and arrested him for jaywalking. They say they knew he was/had been smoking crack earlier in the evening but couldn't find it – so arrested him for jaywalking. He will therefore spend the next three days in jail. Officer laughs and makes a joke about letting him go earlier but getting him in the end. (NT/A/OBS 2)

The observation of misdemeanours means that these stops are legally justifiable but they seem to serve no other purpose than harassment of those known to the police. They are concentrated on certain groups of people - the homeless, drug addicts and prostitutes that appeared to be regarded as 'police property' (Cray 1972) and the more interactions people have with the police the more this becomes taken as evidence that the stops were legitimate.

Less frequently stops articulated by dress, when officers perceived a woman to be 'dressed like a prostitute' or wearing baggy clothes in warm weather which could conceal weapons or drugs. Although officers reported that stops often follow a description driven by a witness or Dispatch, I did not observe a stop of this kind and was not given a concrete example of one happening. Finally, officers articulate stops based on time and place. Place is used in most justifications of stops but occasionally this is accompanied with an officer believing that it is unusual for a person to be in a place at a certain time of day. The most common articulation of time and place is officers feeling someone does not belong in an area. This is most commonly based on the perceived race or class of a person seeming incongruent when compared to the predominant make-up of a neighbourhood.

B. Area B

Area B covers the historically black part of New Town. It has grown and become more diverse and has significant minority populations. The area is split into three sections. Two of these sectors are mainly Latino/a and white, and are split between a business area with shopping centres and care facilities, an upscale residential area and a predominantly poorer Latino/a area which is mainly apartment buildings. The major crime problems are commercial robberies, residential burglaries, stolen vehicles and drugs; because many of

the residents are illegal migrants they have problems with under reporting of crime. The final sector can only be described as a ghetto, it includes a desolate business area and large areas of concrete block reinforced housing. The station opened in November 2002 and is staffed by relatively junior officers. A Sergeant describes this sector:

*The area that we are responsible for is *** sector. It is predominantly African-Americans at this end; Hispanic to the north, further to the west the majority is white and Hispanic. So it is a real good mix. This is the toughest part of town, the most violent crime is in this beat; area A comes in a close second. The largest single problem is the gangs, this is a very violent gang area, gangs control drugs and drugs lead to property related stuff. We don't have an overabundance of sexual assaults, its mostly gang-related crime – homicides, shootings, gang fights and the drugs. The drugs fuel a lot of the property crimes, a lot of the robberies and burglaries and petty crime, especially in the more impoverished neighbourhoods. (NT/B/SGT/12).*

Stops are used less frequently in area B, than area A. During interviews, officers estimated that they used pedestrian stops roughly 6 - 7 times and make 3 – 5 traffic stops per shift. This was confirmed during the observations. In contrast to area A, the estimates of the number of stops made remains the same or decreases during the graveyard shift. Again officers often spoke with a reverence for the law and the Constitution and perceived the courts as a constraint on their actions:

We supervise ourselves basically. You know if an arrest leads from that then that is looked at by the courts. So it is the courts, our supervisors, everybody is looking at that, you know, we can't illegally search somebody and we can't illegally seize somebody. If we do then we are subject to the liability of that and we could get a lawsuit on us and then the case is thrown out on top of it, it is not worth it. (NT/B/PO/14)

Officers rarely mention the role of sergeants in regulating their stops and when they do it is to note that their sergeant is particularly 'active,' suggesting that others are not.

Legal constraints are undermined by the use of consent and pretext stops. Consent stops were mentioned by all officers as the most common encounter: again officers will ensure

that they find the probable cause to justify the stop if the person refuses. A sergeant explains:

If I want to speak to someone I can just ask and if they consent I am not infringing their Fourth Amendments rights. 99.9% of the time people will stop and talk; even the bad guys with dope on them will stop and talk to you. This is a technique that more seasoned officers will use because it throws criminals off. They will either talk to you or ignore you. If I know that they are dirty, I will follow them down the street talking to them – most people can't stand a person following and talking to them and so they will turn around and talk to you and then you can get consent. You are not harassing them just getting them to talk to you. By talking to someone they start lying to you and then you have reasonable suspicion. We teach techniques to get permission. "Do you have any weapons? Okay, then you won't mind me searching you?" In eight years, I have had only one person say "no." It's the way that you frame the question – a lot of people figure that if they give consent you won't bother to look. (NT/B/OBS/3)

The technique of following someone down the road until they talk to you undermines the whole notion of someone having the free will to consent or leave. This quote also embodies the idea of police property that was evident in area A, the sergeant clearly distinguishes those that are 'dirty' and so worthy of attention. The ability to manipulate people into giving consent was clearly described and held up as a commendable skill:

"Hey, do you mind if I talk to you?" "Sure, no problem." "Do you have any ID on you? Because I have to write a log throughout my shift so my boss knows who I am talking to and basically make sure I am doing my job. "Yes" that is fine. If not, "okay, well I just need to write down your information real quick, name, date of birth, social. Hey, have you ever been arrested before? Or got any tickets anywhere?" They will either say "yes" or "no." "What were you arrested for in the past? Do you have any warrants now?" "Yes" or "no." At that point you either get in a foot pursuit or it goes from there. Once you have done with the consensual stop, you have run the person, while you are doing that you are still continuing the conversation: "Hey, listen we are conducting some investigations in this area on narcotics sales and narcotics use, do you know anybody in that apartment that you came out of that might be using narcotics? How many people are up in that apartment?" Things like that. Or if I am working it more towards a burglary type thing, "hey listen there has been a lot of burglaries in the area, do you live in the area? Do you know anybody in the area that is committing burglaries? We know you live in the area and we want to prevent your house from getting burglarised and because of that it is totally on the down low, we are not going to tell anybody, if you can tell us anything?" And sometimes they give us information and that is done, "well, okay you are free to go, sir." And as they turn around to walk away: "let me ask you another question, by any chance do you have any narcotics on you?" If they say

"no." "Well, do you mind if I pat you down and make sure you have no weapons on you? You don't have to but at the same time I'd like to make sure I am not getting any bogus information from you." And they usually consent to a search and you find drug or weapons or you don't and if you do then depending on what kind of drugs or what you find they get a citation or they go to jail. Or if you don't find anything – you thank them for their time and "hey, listen next time I see you now I know you are not a bad guy, I'll wave at you and if I see you inside Seven-Eleven I'll buy you a cup of coffee" sort of thing. (NT/B/PO/10)

Consent stops were mentioned by all officers as the most common encounter, although all could find the probable cause to justify the stop if the person refuses. Refusing to give consent was also used to build reasonable suspicion; as officers would then assume that the person had something to hide. Area B is outside the area covered by the city ordinances but there remain a number of traffic violations which can be used to negotiate consent or conduct searches under probable cause. The following quotes were typical:

If people have got nothing to hide they are going to let you quickly search them. You ask for consent but make sure that you have probable cause if they refuse. If they say 'no' that just adds to your suspicion. When you have probable cause to stop someone – e.g. for jaywalking, intoxication in the road – it doesn't mean that you are going to be arrested but they are not free to go. A lot of guys will do PC stops because it is easy. There are so many city ordinances in New Town that the only thing you can do is walk in a straight line! That is a lazy way to do it but it is true but if you want to find a reason to stop someone you can. Sitting here for the last 20 minutes, I have seen a dozen offences that I could arrest for. (NT/B/OBS/3)

It would greatly restrict the job that we could do if we weren't able to stop people cause generally a lot of time that is how we develop suspects; we come across stolen property or just by chance by stopping people for smaller offences. With very small offences like jaywalking or unregistered vehicle something like that and we end up speaking with the people and developing a suspect to a different crime, locating stolen merchandise in their car. You know, we stop someone for jay walking and do a pat down and retrieve a gun on them, he is an ex-felon he shouldn't have a gun in the first place. (NT/B/PO/11)

Greater emphasis is placed on using stops to get to know an area or crime prevention rather than crime control as in area A:

And we don't necessarily only stop the people who we think are criminal because sometimes it is a fact finding mission and that is when we just stop and talk to Mr John Q Citizen and ask him the same types of questions. It is being proactive. I think that it is very important. I think that it is one of our better ways of

establishing a person's identity. It is basically bread and butter of doing police work. It is policing 101. It is like Sir Robert Peel policing. (NT/B/PO/15)

This quote also illustrates the importance some officers place on doing stops that are described as proactive policing. Yet there seems some awareness that stopping every individual they encounter (as was the practice in A area) was counter-productive:

You have got to know your area. Like where we are at the moment, people are vagrants, there's lots of disorder, homelessness, these are symptoms of bigger social problems. We don't have the resources for that; there is a time and place for everything. We are not going to help by harassing these people- it would only take the person off the street, they would have to serve time because they cannot afford to pay fines- that doesn't make his life better or help the community. (NT/B/OBS/3)

This was clear during my observations. There were many occasions where officers observed people jaywalking, walking in the roadway or committing other petty violations - officers often pointed these out but then chose to ignore them. It was also clear that officers were less automatic in their use of frisks in this area. During interviews there was a greater adherence to the *Terry* ruling:

As far as frisk, it really depends, you can tell when you are talking to somebody if they are hiding something especially people who are wearing a lot of baggy clothes, a large jacket or something. For me to do a frisk, I want to know that I am going to be safe and if there is anyone around me they are going to be safe. And if I come up to somebody that I have stopped and I for any reason believe that they might have something on them that could be a danger to me or someone else, I am going to frisk them. But I have to have reasons why am I going to frisk you. And I do that with everyone and I treat everyone the same. (NT/B/PO/13)

My observation notes record one encounter:

*10.04pm: Driving around *** area. Officer observes two individuals walking through an alley. It is a man and woman, both are black and middle-aged. Officer flashes his lights to indicate that he wants them to stop and asks them to stand in front of the car. Officer explains that it is a high drugs area and would stop anyone in an alley way. He asks if they have any weapons or drugs on them or any outstanding warrants. They both answer "no." The officer asks their names and checks their IDs on the computer. It says that he has been arrested before for drugs paraphernalia. The officer explains that this is enough to frisk him. The officer asks the man to put his hand behind his back. He holds his hands together and pats him down – pockets, waist band etc. Nothing is found, interaction is good*

humoured, the man admits to smoking cannabis earlier. The woman is not frisked or searched. (NT/B/OBS/4).

The officer checked the ID and orally established reasonable suspicion before conducting the frisk. He had no reason to frisk the woman and so did not do so. This is in contrast to area A where they frisked every individual on first contact before reasonable suspicion could be established, despite similar safety contexts and crime trends. This difference in the use of stops seems to be explained by the nature of the population in an area, whether it is transient or permanent. Area A covering the downtown portion of the city is perceived by officers to have a transient population which require aggressive proactive policing, whereas area B, although made up of different minority ethnic populations is perceived as a more settled area which requires the officers to develop a longer term relationship with its residents, hence the focus on getting to know the people in an area and not stopping and arresting people for petty violations.

The majority of stops (those not taking place on the basis of consent or a pretext) appear to be based on suspicious behaviour, appearance, gaining intelligence, stopping known offenders and notions of place and time. Most commonly reported were stops based on behaviour that the officer finds suspicious. Officers most commonly described hand-to-hand drug transactions or someone acting suspiciously upon seeing officers:

Somebody who might even be acting a little suspicious, maybe they see me coming so they turn and walk the other way; when before they saw me they were maybe walking westbound and they see me now they are going to go southbound real quick or make a quick then because "oh gosh, there's the cops!" So that will kind of raise your brow and then you will watch them for a couple of minutes and they keep doing these turn-backs, what I call a turn-back, they keep looking back to find out what you are doing, are they going to follow me? What are they doing? I simply pull up to them and say, "Hey, do you mind if I speak to you for a moment?"
(NT/B/PO/13)

Appearance was also a common reason given for suspicion, most often seeing someone who is perceived to be a drug user:

Do you know what methamphetamine is? Some of the symptoms that it causes, basically it eats you from the inside out, you start getting tooth loss or tooth decay, sucked cheeks, weight loss, it gives you what we call 'the bug' basically a numbing sensation throughout your body and as the numbing starts to go away as the narcotics have run out of your system as you start getting feeling back you start to itch in certain areas. So what they will do is that they will start to scratch in those certain areas to the point that they are bleeding, they have open sores and open wounds throughout their body, back, neck, chest, face. It is extremely addictive, they just stay up for days and days at a time, they say it is like an alertness type feeling but it also causes extreme paranoia and you think that everybody in the world is out to get you. Because of these symptoms when I am driving down I can look at somebody, and I have gone through a lot of classes on narcotics and people who are under the influence of narcotics and what the symptoms are, so just by driving down the street I can look at somebody and see that they are under the influence, which in this state is a felony. So I use my previous experience and my training to dictate when I stop somebody. (NT/B/PO/10)

Other stops were conducted with the purpose of gaining intelligence. It was unclear in these situations that there was any suspicion present:

They know the people down there, they know the trouble makers, if they see them out in the street they know to keep an eye on them, or if they are in a certain area they are probably up to no good and that is when they get stopped because of what they are doing. The good thing there is that say after you have stopped them a burglary comes up, say two buildings from where you stopped this guy and you know this is his field and that can be used down the road possibly to help identify that maybe he is the one that committed the crime there. It is just a good way to log or document the people we know are problem people, where they are at, who they are associating with. We ask their name, we don't beat it out of them. If they don't tell you then you know there is a problem or something that they are trying to hide. (NT/B/SGT/13)

You get to know the people in your area, you get to know who should be there and who shouldn't be there, you find out a lot of the reasons why they are there. You can stop and talk to somebody, they give you consent to talk to them, you are just talking to them – finding out who they are, you find out they live in the neighbourhood, they know so much about their neighbourhood that they can tell you where the crime is in their neighbourhood. (NT/B/PO/13)

There was little discussion about what constitutes intelligence and its quality: most officers mentioned getting to know who was in an area as constituting intelligence. Rather than

stops being ‘intelligence-led’ they are led by the desire to gather information. Officers regularly articulated stopping known offenders, often to gather information on why they are in an area and who they are associating with. There was still a sense that their stops were focused on people they knew or people with prior convictions who were then deemed legitimate targets:

Well, I am one of those officers who believes in quality not quantity. And therefore pretty much everybody that I stop... I have a pretty good record that everybody that I stop usually has drug priors or criminal history versus stopping somebody that has never been arrested and is totally an innocent type person. Again, that comes with experience and training that you get. (NT/B/PO/10)

Sense of place and time was a larger factor influencing suspicion in area B. The large geographical area covered and greater number of residential areas in area B means that officers were more specific about locations where particular types of crime occurred. Officers also articulated the idea of someone ‘not belonging’ in an area as the reason for stops:

If you are a White officer who works in a strictly Black neighbourhood, you are going to stop people who are Black. But at the same time somebody who is out of place in that neighbourhood, maybe a White male who is looking around suspiciously, the chances are that he is in that neighbourhood to try and buy drugs or he is lost and you stop that person to see if they are lost and need help or if they are there to purchase narcotics. (NT/B/PO/10)

[W]hat makes me suspicious is if it is someone that I know or who doesn't belong in the area. (NT/B/PO/13)

C. Area C

Area C covers a large diverse, mainly residential area. It contains poorer areas and the University of New Town but has a mainly white suburban feel. A lieutenant describes the area:

My perception is predominantly white; I would say 70% White, probably 20% Hispanic and then a combination of Black and Asian. It's middle-class. Right now the major problem is drugs, just like every place else. Drugs, auto theft is huge, probably close to that is burglaries and that can be broken down into residential

and auto burglaries (burglaries from cars). Typically we don't have a lot of high performance vehicles stolen because people tend to keep those things locked up in garages and places of that nature. We have problems with Honda Accords, cars that kids like, like the Mitsubishi Eclipse and a number of other cars that kids like. (NT/C/LT/16)

Stop and search is used less frequently in this area. A lieutenant explains:

It is not a major part of our crime fighting strategy. Not at all. A stop and frisk is essentially one small part of a package of police tactics that we use to fight crime. Typically in an area where we have high incidents of auto thefts, we are looking for specific vehicles, specific drivers in a specific period of time, engaging in a specific type of behaviour, so there is a number of things that we look at not just one thing. There are other things say we have problems with person to person robbery, armed robbery, we may use decoy operations where we put an officer out dressed as a citizen carrying a camera or looking like a homeless person or looking like a tourist and through just observing the behaviours of people who would typically commit armed robberies in a given area. Even then there is a series of steps, we observe and then move forward with our arrests. Stops are just a very small part. (NT/C/LT/16)

This was confirmed with officers' estimations of the number of pedestrian stops they do per shift. The average answer was 4 per shift, one officer didn't make any pedestrian stops and the highest was 5:

It depends. Some nights we are so busy with calls – none, some nights when it is slow – maybe 3 or 4. I think the most I have ever stopped in a night is maybe 5 people. (NT/C/PO/20)

Again, officers talked about the law and legal constructs such as reasonable suspicion and probable cause as structuring their use of stops. Many officers talked about the demands for service not giving them the time to make stops. Officers talked about using consent and probable cause as the basis for making stops but this was not as common as in areas A and B.

New Town is horrible for people getting hit by cars. So I have a legitimate reason to stop someone who is crossing the street in a dark area and there is no cross walk, not to mention that you are in a high crime area, it's night and you are out, I want to make sure you are not committing a crime. "No, I just left my job, I work here." "Do you have any warrants or anything I need to know about?" "No." "Okay, I'll see you around, have a nice night." (NT/C/PO/20)

If you look for legitimate good reasons to stop for what you think is legitimate, we will call it an up-to-no-good person. Eventually it is going to result in something, you are going to get intelligence, that “there is this gang hanging out in this complex and they are robbing this store tonight at this time.” “There are stolen cars over here.” “There is a stolen gun.” “There is a guy with a meth lab over there.” It is really just intelligence building that is how I look at it personally. If I am going to stop a person on the street, I want to see what that person knows because they are the ones living in this neighbourhood; I don’t live in this neighbourhood. (NT/C/PO/21)

Although people were stopped on the basis of petty violations, they were unlikely to be arrested. Commonly, people were told to pour away their drinks, move on or next time cross at the crosswalk. Officers mentioned this type of stop as an important intelligence-gathering tool and articulated more specific notions of what constitutes intelligence.

Frisks are not automatic as in area A. Officers placed greater emphasis on needing to articulate reasonable suspicion to conduct a frisk in line with the *Terry* ruling:

The limitations are 1, if there is justification that is present that would allow a stop that doesn’t automatically mean there is justification for a frisk. There has to be some additional articulatable reasons to justify that frisk, for instance if you see someone who matches the description of someone who is involved in a petty larceny you may have reasonable suspicion to pull that person over and determine whether that person is or is not the suspect. But under those circumstances you probably wouldn’t have enough justification to do a frisk on the person. (NT/C/SGT/17)

During one observation shift in this area, the officer made 9 stops (2 were vehicle, the rest pedestrian); he did not frisk any of these people, instead asking that they kept their hands out of their pockets.

The character of stops reflects greatly the patterns evident in area B. Most stops were based on perceived suspicious behaviour, but were mostly confined to a number of areas that officers believe are problematic:

*[L]ike *** and *** highway – it’s a huge meth place, everybody is doing drugs, it is right on the corner... You tend to watch and him and his buddy are standing*

there talking and the minute they see you their hands go in their pockets and they try and walk off in two separate ways. Something is probably going on and I'd probably step out and say "do you mind if I talk to you?" Of course if they say "no" ... But normally they will say "yeah, sure," because they figure that if they say "yes" we won't look so hard. So it is behaviour, where they are at, location too.
(NT/C/PO/21)

The use of appearance was also common. Officers identify people they believe are drug users and use this to build suspicion. Officers articulate finding certain types of dress suspicious:

If you see people dressed in gangster type attire you would stop them because that is what you are looking for. These are the people; this is what it all stems from. The guy that is selling the dope, has the guns, does the robberies to get the dope, it all stems from a lot of this type of activity. The guys that are doing the robberies and the homicide type stuff are usually tied into everything else that is out there, in terms of criminal activity out there. (NT/C/PO/19)

*You do profile in this job, you are not going to stop a little old lady who is walking down *** ** who is walking from Vons [supermarket] to her house because she is not committing a crime. I mean - I am 99.9% sure. If I see a guy who looks like a gang banger and is dressed like a gang banger and is walking like a gang banger, that B-bop gang banger look, I am going to stop him because he is up to no good.*
(NT/C/PO/20)

When probed further, officers describe 'gangster type' attire as urban street wear that is common amongst most young people, such as baggy trousers and sportswear. It is likely that stops based on 'gangster type appearance' will fall disproportionately on blacks and Latino/as.

Explaining stop disparities

In August 2001, a general order was distributed to all New Town personnel entitled 'Prohibition Against Bias-Based Policing.' The order was developed by a committee that included representatives from throughout the force, the Multi-Cultural Advisory Committee and the unions. The order prohibits all members of the department from engaging in racial profiling activities. Racial profiling is defined as:

Members will not discriminate against any person. Any arrest, detention, interdiction or other law enforcement action based **solely** on the actual or perceived race, ethnicity, color, national origin, gender age, religion, culture, disability, sexual orientation, economic standards or other traits of a person or group is strictly forbidden' (New Town General Order 2001, emphasis added).

The order goes on to commit all personnel to uphold all laws relating to individual rights and guarantee everyone's equal treatment under the law. 'In addition to respect for human rights prescribed by law, department members will treat all persons with courtesy and dignity inherently due every person as a human being. Members will act, speak and conduct themselves in a professional manner in all contacts with the public' (New Town General Order 2001).

In 2002, state legislation required all police departments within the state in which New Town lies to prohibit racial profiling and collect continuous data on traffic stops. This grew out of anecdotal evidence that minority groups were being unfairly targeted and advocacy efforts by organisations such as the American Civil Liberties Union and NAACP. Political wrangling by smaller police departments in the state and police unions resulted in just the largest eight police departments collecting data for one year. Officers were required to complete computer-readable forms after every stop they made, which included officers' perception of the driver's race, reason for the stop, conduct during the stop (searches, handcuffing) and disposition (arrest, citation or warning). Individual officers were not identified on the forms. The results showed that blacks and Latino/as were stopped at rates higher than their percentage of the driving population.

Two senior officers reflect on the study and changes to departmental policy made as a result of the study:

We found that we were stopping minorities at a higher rate than we were caucasians. But it wasn't like off the chart. What bothered us more was what happened after the stop. There were clear differences in how minorities were being treated. (NT/DC/1)

One of the other things that came out of it is the mandatory diversity training and I hate the word mandatory diversity training but I also recognise that we are all raised different, we come from different neighbourhoods, different cities, different states. We are a product of our upbringing, if your family sat round a table and talked a certain way about a specific race of people that is what you know and in law enforcement if all you have to have is a GED or high school diploma coming in the door often times you don't get a person who is well rounded. It [mandatory diversity training] is something that you can't just have one training session on, it is something that has to be institutionalised, something has to take place daily and that is what we have done coming out of that study. Every day that a squad comes to work and have roll call training, they have to talk about some tough topics and if they are not doing that we have to continue to emphasis the importance in doing that because that is what is going to make a difference in policing. (NT/DC/2)

Despite the data collection finishing a year before the research, there was considerable hostility towards the data collection process and anger around the idea of racial profiling. Senior officers presented mixed reactions towards the study. Some would have liked to continue to collect data to measure the impact of changes to policy coming out of the study and provide a continuous picture of how stops are being used in the Department. Most complained about 'de-policing' as a result of the study and worries about impact on officer morale:

I thought that study effectively had a bit of a chilling effect on some of our officers who are actively going out and trying to find an individual because if that individual is areas A or B, they are both predominantly Hispanic or black, and officer Jones stops 10 people in one night it looks bad. All of his stops have engaged stopping black people, but there is not a whole lot of white people hanging around there. So we were really afraid of, not the best word, de-policing taking place and did it happen? Yes it did take place. Our officers have families, they have children and by the very nature of them doing their job, they could lose their livelihood, they are going to err on the side of caution and they are going to do the thing that would be least obtrusive and I think the citizen pays and that is unfortunate. I didn't like the study (laughs), mainly because there are so many burdens and restrictions that have already been placed on police officers. As a matter of fact I believe that the biggest reason I didn't like it was because I didn't like the way it was sold to the officers. They said initially that we were racially profiling people, which New Town officers take a very great offence to because we

are very good at putting bad guys in jail, that is what our job is and it is a very distasteful job in the eyes of some. But it was sold to us that the study was used to determine if we were racially profiling our citizens. And that's what we took personal offence to, and I am speaking for myself okay, and just hearing it from some of the other officers that it just kind of hurts your feelings when you are out there putting your life on the line every single day and a bureaucratic decision has been made that could really affect the way that you do your job. It was kind of unnerving but the officers – they had to do it and their complaints were minimal but there was some disappointment there. (NT/C/LT/16)

Officers' reactions to questions about the study were mixed and guarded. Most complained about the increased paperwork, but accepted it as part of the job. The study was perceived as politically motivated and designed solely to capture officers racially profiling:

The data collection that we went through didn't capture anything. It was more about hunting for information than looking at why people are stopped. We never get enough academic input on these things. I've always been one of these people... when we talk about making major changes to policing we better have a good reason. Too often we collect data and then manipulate the data to say what we want it to say. We were doomed from the beginning. When I saw the form, I asked who was going to interpret it. They can only analyse what they have got. The perception amongst officers was that we were damned if we do and damned if we don't. If the results didn't say what folks thought it should say then we were cooking the books, if it found something – then “we told you so” – so a no win situation. There was so much politics in the development of that form and the report. All that work and data to get to the end and have it say that it was inconclusive! (NT/B/OBS/3)

The study was used for profiling and to find out the statistics of profiling and I don't think that is an accurate tool. If it comes back that we are profiling and I will be honest with you I don't know any officers who do profile. The feedback and the newspaper reports say “Oh yeah, the report is out and it shows that African-Americans are stopped more than Hispanics by 10% and more than whites by 15%” In the areas that I work I don't really have a choice I stop the people who need to be stopped, I don't stop you because you are white, black anything else, Hispanic, you name it – you commit a violation then I am going to stop you. (NT/B/PO/13)

I thought that (long pause) let's see. I thought that... let's see. I didn't think that it was the most effective way maybe to get that kind of information that they were looking for. I don't know what would be the most effective way but I didn't that that was it. I think that it could be subject to... If you had someone on the left side of things looking at it and someone on the right side of things looking at the finished project after we had done, you would come up with two different answers as to what we discovered from it, so there needs to be a better way to determine what the answers are from the evidence that we gathered from the study. (NT/B/PO/11)

Officers had very little understanding of the design and intention of the study. There was universal hostility towards the study that was expressed as anger that their professionalism was being questioned or that the fact that the study was taking place was implying that they were racist. Some expressed concern about how the statistics would be used and went on to stress their professionalism and respect for others. The majority of officers offered an argument based on the idea of available population to explain the pattern of stops. This is likely to reflect the methodological debate evident in US discussions of racial profiling. An illustrative example follows:

*It became a hassle after every traffic stop having to fill a silly form because people thinking I am stopping people solely on their colour, it's ridiculous. If the police department was only stopping black people then all the white people who commit crimes would be getting away with everything and all the Hispanics would be getting away with everything. If you work in *** you will be stopping predominantly black people because it is 95% black people who live there, whereas if you work in *** you are going to be stopping older white people who are retired and also some Asian people who work in the industry there, that is just where they live. (NT/C/PO/20)*

Officers also commonly noted different offending patterns amongst ethnic groups, most often in the type of drug use:

I didn't think that we racially discriminate or stop people because of their race or their ethnicity. I feel that we stop people because of the crimes that they commit. If you are a white officer who works in a strictly black neighbourhood, you are going to stop people who are black. But at the same time somebody who is out of place in that neighbourhood, maybe a white male who is looking around suspiciously, the chances are that he is in that neighbourhood to try and buy drugs or he is lost and you stop that person to see if they are lost and need help or if they are there to purchase narcotics. Again, depending on what type of narcotics you are looking at, Methamphetamine tends to be a white drug, it is not sold openly out in open air markets like crack cocaine is or marijuana is. It is mostly sold inside of apartments, houses, things like that or if you know somebody you will call them up, they will pull up outside your house, you will walk up to their car, get it and walk back into your house. Whereas crack cocaine you drive past, someone waves at you or whistles, you give one person the money, someone else gives you the drugs and you are gone and that happens a little bit more openly. It tends to be – but there are no hard and fast rules – minorities tend to be involved in crack cocaine. They have lookouts on corners, they whistle when they see a police car. Marijuana is sold openly like crack cocaine is or if you are trying to buy largest quantities, you pretty

much would have to know somebody and knock on their door. So again, it depends what kind of drugs you are looking for that is going to determine what neighbourhoods and what actions are going to be taken. (NT/B PO/10)

There were clear problems in how the study was implemented, not identifying individual officers and only conducting the study for a year meant that the Department missed a chance to improve accountability and effectiveness and start a dialogue around racial profiling. This is evident when officers talk about racial profiling. Despite all officers having received mandatory training on diversity that included a discussion about racial profiling, racial profiling was described as an officer *solely* stopping someone due to their perceived ethnicity.

You know, personally I haven't seen anything to make me think they are profiling in our area. I can think of no one on my squad where the only people they stop are black or the only people they stop are Hispanic. (NT/B/SGT/12)

Hence racial profiling would be identified as an officer only stopping minority drivers. A broader definition of racial profiling acknowledges that race may be used as one of several factors in an officer's decision to stop someone. It would also acknowledge the different decision-making points throughout an encounter where officers can act in a biased fashion – such as frisking, asking for consent, searching, issuing a citation or making an arrest. Yet the study and training had failed to allow deeper understanding of decision-making and instead caused anger and resentment. Very few officers had received any feedback about what had been discovered in the study and none could point to any policy changes that had come out of the study.

Part II: Greenville Police Department

State law on stop and seizure for the state in which Greenville is housed, is similar to the law outlined for New Town. There are no additional city ordinances in force.

A. Area A

Area A covers the central downtown area of Greenville. The area contains the central business and shopping districts, sports arenas, a university and the main transport links. There is a large residential population, which is very diverse including poor areas, bordering wealthy areas and trendy areas with refurbished Victorian houses or loft apartments. One officer describes the area:

The people who reside in the area are predominantly white and I would say middle-aged 30-50, some a little younger. But the people who hang out in the area are predominantly black and I would say in the mid-thirties range, 30-40. It is hard to say - there are some really high priced lofts next to some really bad flea-ridden apartments. Its very mixed – white, black, a lot of Hispanics moving in, and a large gay population. Drugs are the problem; it is a high drug area. It is a really big area but that is the predominant problem and it is only in say a 12 block radius or so there it is a serious drug problem. It is predominantly crack cocaine. There is a lot of heroin and marijuana. The rest I would say would be more mainstream crime like burglaries, because there is so many people, so many dwellings, so many apartments in such a concentrated area that there are a lot of property crimes.
(GPD/A/PO/6)

Pedestrian stops are used frequently in area A, with officers estimating that they make between 6 and 10 stops on an average shift. The nature of the policing area (covering many pedestrianised areas) means that officers are more likely to make pedestrian rather than traffic stops.

Officers in area A mention the law and the courts as the major source of regulation of stops. Officers construct the law as a constraint and repeatedly make reference to the legal constructs of probable cause and reasonable suspicion in justifying their use of stops. There is no mechanism for tracking cases that were thrown out of court, although the force were developing an early warning system that would include this measure. Senior officers

instead placed emphasis on ensuring that officers were kept up-to-date with regular training and bulletins noting any changes in the law, rather than administrative controls.

Monitoring officers' use of stops is the responsibility of sergeants. Officers in Greenville are required to keep a log sheet of activities during a shift; on this they note the nature of all calls for service and any stops made including the name of the person stopped and the disposition of the call or stop. Sergeants report monitoring the log sheets and arrest reports and turning up at calls or stops as the main ways in which they supervise officers' use of stops. One sergeant explains:

How do I supervise them? Well, sometimes I will go by on their stops and see what they are doing. I will review their paperwork and see what kind of arrests. You know I get to see their log sheets and paperwork that they complete, tickets and whatever else. A lot of it is just personal observation, knowing who the officers are, driving by on their stops, making sure that they are doing what they are supposed to be doing, basically. (GPD/A/SGT/9)

Sergeants review the log sheets at the end of every shift but did not appear to be using them to look for disproportionate patterns and they do not allow sergeants to check the legality of stops made. Officers rarely mention sergeants as a source of supervision and often remarked if a sergeant was particularly active, implying that many are not.

Officers in area A appear to frisk almost everyone with whom they come into contact.

Most officers estimated that they would frisk in 95 percent of stops. Officers justify these frisks by noting officer safety issues, the nature of the area, the type of violent drug crime in the area and gut feelings:

Obviously, the frisk is going to be for my safety only, if they are wearing a big coat, if they are wearing baggy pants, if there was more than one of them, if they are fidgety and nervous, just depending on their behaviour. And you know, the other thing is what kind of feeling I have, if I have a bad feeling then I am more likely to pat down and frisk somebody then if I am feeling that they are relaxed and complacent. I'll ask, I mean I always ask permission of everyone that I frisk, "do you mind if I search you for weapons? Can I pat you down for weapons? For my safety and your safety I want to make sure that you don't have any weapons."

Whatever the line is that day, whatever, you know. Personally, I don't like to get too close to these people, so I try to do it as less obtrusive as possible, you know, pat them down on the outside, along the chest, down the back, along the waistband and then for men do the quick sweep between their legs, and ankles and that is all on the outside of their clothes. (GPD/A/PO/6)

*On other stops because of the crime rate we have out here, violent crimes and the transient population that is known to carry knives, you know different kinds of weapons for their protection when they are sleeping on the street. So we definitely have that officer safety issue too where doing a frisk is often necessary. Anything that makes me believe that they are trying to conceal something. I think the area impacts quite a bit because predominantly in the area you have a lot of weapons, a lot of drugs, a lot of violence, I am working the *** *** area there was a huge amount of gang violence. We maintain a higher alert during a lot of our stops then you would in an outside suburban area. So it does happen a lot more than I would say in some of the other neighbourhoods. (GPD/A/PO/8)*

Thus officers appear to frisk automatically in this area, as in area A in New Town pointing to the transient nature of the population as the reason for this. There is a general belief that the area is a dangerous area to police. In many of the stops that were observed in this area, there did not appear to be individual suspicion to justify these frisks.

Officers routinely circumvent the Constitutional protections by asking for consent to search or finding probable cause based on misdemeanours to conduct a pretext stop. Consent searches are particularly frequent, often focused on people that officers have had previous interactions:

Like say you observe someone selling drugs and you walk up to them... I usually try and make sure that you get consent from them as well as your reasonable suspicion and probable cause because you know you want to make sure your case is airtight if you do end up making a case on somebody. So what I usually do, I mean I don't immediately disclose to them what I saw them do, I will try and make it a more consensual thing and say, "I noticed you have been in this area for a while, do you know that this area is a high drug trafficking area? Can I talk to you for a minute?" If they say "yes" and I get the affirmative on everything, then I would say, "for my safety, do you mind if I search you for weapons?" And if they say, "go ahead." I'll conduct a search for weapons and obviously if you find a weapon you are going to arrest someone. Also you can ask them, "do you have any drugs on you right now?" If they say, "no." "Do you mind if I check, search you for drugs then?" You have to make sure that you are doing every you know Ps and Qs because... If you feel a wad of plastic in someone's pocket and it has no chance of

being a weapon then there is no reason you should have to pull that out unless you have consent to search for drugs. You would be surprised. Someone could be standing in front of you with a pocket full of crack cocaine and they would give you consent. I can't really understand that mindset but if I had a pocketful of crack it would be "no, officer, you can't search me." But you get "yes." I would say 85-90% of the time you get "yes, go ahead." (GPD/A/PO/8)

Surprisingly, they [officers in area A] use it a lot. Well, if you don't really have a reason – you just look at somebody and you think they may be involved in a crime but you don't have enough probable cause or reasonable suspicion to stop them. You can stop and talk to anybody; you can say, "hey, do you mind if I talk to you?" If the person says "no" and walks off then there is nothing that you can do. If the guy says, "Yeah, okay," that is a consensual contact. You don't have to have any legal basis to talk to that person if he is giving his consent. They go on to search a lot. If you don't have a good reason to search but you suspect that they might have drugs on them you can ask them "do you mind if I search you?" Surprisingly people agree a lot. I think that maybe they don't understand that they can say "no." Or they don't know what is going on, so they just say "yeah." (GPD/A/SGT/9)

Officers also frequently use probable cause that someone has committed minor offences in the hope that it will lead to bigger offences.

You know it is hard to verbalise what you know, what you see is going on and that is the biggest problem and that is where you get into the legalities of things and probable cause. Because you know what is happening but you have to be able to verbalise it and write it out and say, "okay, this was my probable cause for why I stopped these people..." And mostly, it has to do with people contacting vehicles, people stopping vehicles in the middle of the street, you know blocking traffic, something that is substantial enough to get probable cause if you happen to make an arrest. The probable cause would be the fact that they are blocking traffic, stopping in a no stopping zone, that they pull over in a no parking zone and they are parked there for a few minutes. You know, not only is there a lot of pedestrian traffic there is a lot of vehicle traffic through that drug area and you know sometimes criminals they usually let everything slip, so they don't have proper licence plates, expired licence plates, so you can get them for something. (GPD/A/PO/6)

In downtown there is a ton of... I mean you can stop anyone for jaywalking all the way up. There isn't a lot of that because that isn't really on our priority list – jaywalking. But it's very important because a lot of time a minor violation, like a license plate expired can lead to a major felon with a warrant for something. You know you might find a large quantity of drugs in their vehicle; they may have just left the scene of a crime. Minor violations can sometimes turn into the biggest catch. (GPD/A/SGT/9)

Many of the consent and pretext stops appear to be made on 'gut-feelings' or stereotypes about groups involvement in crime. The following quote was typical:

There is a feeling you get. You can also look, you can also tell, people can't hide body language and the guilty act guilty and the innocent act innocent. So you get feelings and the courts don't recognise this. I don't know about England but in the United States if the cop has a hunch that usually turn out to be correct, usually about drugs or something because people follow patterns, I follow them, the guilty act guilty, the innocent act innocent. (GPD/B/PO/10)

The rest of the stops made are justified by observation of perceived suspicious behaviour, or deterring crime. Most commonly officers described making stops based on reasonable suspicion that the officer has observed a hand-to-hand drug transaction:

Probably drug related. Officers see a lot of hand-to-hand drug transactions; they will see somebody just standing in the corner and just watch them. They will see somebody just passing something to somebody else that looks like a drug transaction. So they will contact them. (GPD/A/SGT/9)

Many of the examples of stops in area A appeared to be based on the justification of deterring crime and public reassurance and it was not always clear if there was any suspicion present:

*I think that it is very important because on the average the people who we stop are the same, we deal with the same people in this area. We have a lot of officers who say, "I stopped so and so" "oh, I know him." I think that it is very helpful when the residents and the community see that the police are out there making these people contacts that makes them feel safer because it is probably the number one complaint in that area of *** is from the people that live there that aren't into drugs, they see what is going on. They are not frustrated by probable cause, as we are. So when we are out there stopping people and making people contacts I think it makes the community feel safer. And I think that it sends a message to the drug dealers and drug traffickers that we are paying attention, we are doing what we can do and granted we can only do so much but we are still out there and we are not ignoring the problem. (GPD/A/PO/6)*

It is a proactive approach to policing and it shows a presence, how can I explain it? The people that normally would not go out and readily commit a crime they are often deterred by seeing your presence. While the person that is dead set on committing a crime is going to find ways around you. But making those random stops for whatever your probable cause might be, major or minor, you never know what it is going to lead into. So I think it is a great tool if you can get officers doing

it. Officers that like doing pedestrian stops instead of just answering the radio.
(GPD/A/PO/8)

Thus stops become justified by their deterrence effect. The fact that officers are coming into contact with the same people is taken as evidence that they are stopping the right people. The above quote illustrates the different motivations of police officers – those that are just happy to answer the radio and those that are proactive. Older officers often described stops as a ‘young man’s game, when your reactions are faster.’ Officers place high regard on proactive policing in the form of stops. Officers in this area repeatedly mentioned that Timothy McVeigh, one of the men found responsible for the bombing of the Marrah Federal Building in Oklahoma in 1995, was caught during a minor traffic stop - this has become part of the symbolism around stops. A typical example is:

There are essential, they are the lifeblood of policing. But again it goes back to how they are done. I think back to McVeigh, who blew up the Federal Building in Oklahoma. He was driving away and it was excessive speed and a licence plate that led McVeigh to the officer’s attention. If the officers are not allowed to do simple contact stops for minor violations then it takes away a huge piece of our crime fighting. I mean it may have been that McVeigh could have been written a ticket for speeding and an improperly hung licence plate or something dangling from the mirror, it is a minor violation of little importance but it brings that one key piece to the police officer making the stop, that leads to through an investigative procedure that leads to a major crime. And if that traffic stop had not been conducted properly they never would have executed McVeigh because the first thing that defence lawyers want to challenge is why did you stop that person in the first place and if they are improper it won’t go through the courts system.
(GPD/B/PO/10)

B. Area B

Area B is the northeast quadrant of the city. It has traditionally been an area with a large ethnic minority population. It is home to some of the oldest communities in Greenville but also has some new developments, such as a huge new shopping area and trendy warehouses and apartment blocks. An officer describes the area:

It’s black, Hispanic, the Hispanic population is increasing, and there are some whites, we call them ‘urban pioneers,’ they like to buy the inexpensive houses and

*fix them up. It is mostly black and Hispanic. Its mainly blue-collar workers, some professionals, depends, I would say there is quite a mix. It is pretty diverse. Within our area we have the *** and ***, where we have a lot of problems with drugs and prostitution, and gang members. (GPD/B/PO/12)*

The estimated numbers of stop and search use varied greatly between officers in this area but overall appeared lower than in area A. For patrol officers, the average number was between 3 and 5 pedestrian stops and 3 and 8 traffic stops per shift. Again, most of the officers mentioned the courts and legal constructs such as reasonable suspicion and probable cause as a constraint on their use of stops. In practice the courts are little constraint as officers learn to articulate their stops in such a way that they all appear legal:

When I first came on, I lost a couple of drug convictions on reasonable suspicion, like using high crime area, so you learn from it, are able to articulate it better. (GPD/B/OBS/3)

Stop and frisk was not automatic practice as was the case in area A. Response officers were unlikely to make stops based on probable cause observations of misdemeanours or arrest people for petty violations. One factor that might help to explain this difference is the different nature of populations in each area. As was observed in New Town, the population in area A is perceived as transient and so in need of more proactive policing whereas in area B, although made up of different minority communities, has more settled communities, with whom the police recognise the need to develop a relationship. Officers explained that it is counter-productive to stop and arrest for small things and emphasised the importance of getting to know people:

Some things you cannot ignore and some things are minor infractions. I believe and this might not be a popular view, I don't try and force my standards on other people. Different neighbourhoods have different standards, I am not real good with the language, and maybe there is a better word than standards. Certain things are accepted in neighbourhoods as far as behaviour and as long as it isn't hurtful and disruptive, if it is accepted in that neighbourhood- that is their standard. Whereas my standard may be lesser or higher, do you understand what I am saying? I wouldn't try and enforce or impress my standards on people unless it comes to a criminal offence. (GPD/B/PO/12)

8.00am – stop to talk to a woman hanging about on the street corner talking to two men. The officer explains that she is well known as a 'crack ho.' The officer seems to know her well, uses her first name and she knows his. Asks her if she has outstanding warrants or anything – she says she doesn't. She is talking to two men. Officer says he doesn't recognise them and asks their names, they both tell him. He asks if they have any outstanding warrants – one says he might have officer asks him to check and take care of it. He says he will and we leave. Officer then checks on computer and one of the men has an outstanding warrant for a small amount. "I am trying to build a relationship with the people out here, the warrant is for a very small amount – so I am going to let it slide. I am not consciously aware of peoples' race, I don't take that into account, I go on warrant size. I'll let it slide for a week or two and then ask them to take care of it because we will see them again so it is better to develop a friendly relationship." (GPD/B/OBS/3)

The response officers in this area focus on answering the high calls for service and report having little time to make proactive stops. This was confirmed during observations.

Officers' report using stops most often based on observation of perceived suspicious behaviour, in response to calls from the public reporting suspicious behaviour or reporting a crime (most often drugs and prostitution) and to find out whom someone is or why they were in a particular area. Two typical examples follow:

*8.20pm –Driving along *** [major road bordering this policing area and the next]. See two women walking up the street, which the officers identifies as prostitutes. Officer gets out of the car to talk to them. Both are friendly (and obviously used to regular contact with the police) and hand over their IDs (officer looks at ID but doesn't check it). One explains that she was arrested the previous week. Officer asks if they are 'circuit girls' – they explain (for my benefit) that they spend two months in each city and then move on in a circuit. Officer is friendly, says that she understands that they needed to make a living but if she catches them again she will have to write them a ticket. They agree and go along on their way. (GPD/B/OBS/4)*

Either there is a crime in the area and this person could have committed it or they don't belong in the area. When you work an area for a while you get to know who is out for jogging and who is out for walking around the neighbourhood and who doesn't belong and I just stop them and say, "who are you and where do you live?" The legal things that we can do. Just to see why they are here. It is what the citizens want and I want to know if there is some stranger walking around my area, "hey, what are you doing?" because that is how we find out who is committing the crimes usually. (GPD/B/PO/12)

Suspicion in many of these stops appears to be based on stereotypes as to whom belongs in an area. The racial segregation evident in Greenville means the perceptions of belonging

are usually racialised. During observations when officers were not answering calls then tend to focus their activities on certain locations, focusing particularly on border areas between different ethnic neighbourhoods. There is a perception that officers are more likely to find crime in these areas:

*This is the edge of our area, this is where you have the, I know it is politically incorrect – ‘crack whores’. It is a slightly poorer area, you can tell from the houses, they are smaller, there is a higher poverty level. I don’t want to profile but the people here care a bit less, they don’t do what they need to, they don’t take care of their warrants or tickets, they don’t register their cars. A lot of times I think it is because they can’t afford it but it is still the law and you have to follow it. A lot of times you go to these areas because that is where more laws are being broken. It’s called ‘fishing’ – you have probably heard that. Everyone does it differently I guess, I usually park and here and catch a few people. Part of it is area, like later on we will drive up to *** where there is a lot of drug dealing so you get lots of jay walking and that gives you a reason to stop people. These are the areas that I tend to focus on because you know you are going to get arrests. (GPD/B/OBS/4)*

Summary

The legal context governing officers’ use of stop and seizure has been outlined in previous chapters. The state contexts for both New Town and Greenville reflect the confusing body of national law as outlined in Appendix 5.

Officers in New Town perceive themselves as being ‘controlled’ by the law and the courts. In practice this control is weak because the law itself allows such wide latitude and because it is only very rarely that the legality of a stop and search is contested in the courts. The elasticity of the law and the numerous (and often conflicting) court decisions results in most actions being justifiable within the law. All stops become constructed in such a way as to fit into a proscribed list of factors that officers know will be accepted as reasonable suspicion. Officers give remarkably similar descriptions of why stops are made. When officers do not have even the basic thresholds of suspicion they are able to use consent or probable cause stops for misdemeanours to conduct a stop and further investigation. This

research shows how common the use of these stops were and thus how often legal regulation (by way of reasonable suspicion and constraints on the scope of searches) are avoided. The primacy of legal controls is offered as a justification for the lack of administrative controls and direct supervision. The data speaks to the inadequacy of the law in controlling how officers conduct stops but also speaks to the inventiveness of officers as agents who take the contextual resources they are given and manipulate them to pursue their own objectives, such as safety or the desire to be proactive.

There are clear area differences in how stop and search is operated in New Town. This is most evident when we contrast areas A and B. Area A has an informal policy of aggressive stop and search used. Everyone that officers come into contact with are stopped and frisked and consent and pretext stops are used widely in the hope of discovering larger crimes. If this fails, officers are still likely to arrest for pretty violations. In area B, officers do not stop and frisk everyone they encounter and often ignore petty violations in the hope of developing relationships with communities in their area. One factor that might help to explain this difference is the different nature of populations in each area. In area A the population is perceived as transient and so in need of more proactive policing (not least because the population is less likely to call on the police for service). It is also likely that officers are aware that individuals in this area are less likely to complain about police actions. Area B, although made up of different minority communities, has settled communities, with which the police recognise the need to build relationships.

As in New Town, the data from Greenville shows that the police view the law and courts as a constraint over their use of stops. The emphasis on the law means that administrative controls remain underdeveloped. In practice, only rarely do cases come under the scrutiny

of the courts. Rather than acting as a constraint, the law acts as a flexible resource on which officers can draw to justify their use of stops. The data shows that officers make widespread use pretext and consent stops, circumventing Constitutional protections.

Widespread use of stops appears to be a feature of highly prized 'proactive policing.'

Proactive policing appears to be either focused on a whole policing area that are perceived to need aggressive use of stops, such as the downtown areas of New Town and Greenville or on certain locations within areas that are perceived as being high in crime. Suspicion in many of these stops appears to be based on stereotypes as to who belongs in an area. The racial segregation evident in Greenville means the perceptions of belonging are usually racialised. Officers focus their activities on certain locations, focusing particularly on border areas between different ethnic neighbourhoods.

CONCLUSION

8

This thesis has explored the operation of stop and search in the UK and US. This chapter draws conclusions on the factors regulating officers' behaviour in relation to stops, looking specifically at how suspicion is driven in different local and national contexts. On the basis of those conclusions, the chapter explores the utility of the concept of institutional racism in explaining racial disparities arising from the operation of stop and search.

Stop and search use

The law

Earlier chapters outlined discussions around the rule of law in policing. It is now well established that the law does not control police actions on the street (Skolnick 1966; McBarnet 1981; Ericson 1982; Choongh 1997). In relation to stop and search, it has been argued that the nature of the activity taking place on the street usually unsupervised means that the law cannot effectively control its practice (Smith 1986). Others have suggested that although not controlling it the law acts as a marker, setting the parameters in which police behaviour should fall (Baldwin and Kinsey 1985; Herbert 1997).

In the UK, the law through PACE sets out stop and search powers. As officers' use of PACE is rarely reviewed in the courts (Sanders and Young 2000), it is the system of administrative controls that PACE and the Code of Practice outline that attempt to control officers' uses of stop and search. Chapter 2 outlined the concerns about the failure of

PACE to provide a set of legal rules that limit police practice in a clear and strictly enforceable way. This has resulted in subsequent attempts to tighten the administrative controls by providing a clearer definition of reasonable suspicion, improving the recording and monitoring practices around stop and search, giving clearer directions on how stops should be conducted and encouraging the development of intelligence-led stop and search to avoid stops made on speculative grounds. In practice the system of administrative rules provides limited control over officers' use of stop and search. The data shows that some stops and stop/searches still go unrecorded, thus these stops fall outside any form of control. For stops that are recorded, the monitoring of those stop forms depends on the quality of the supervision that varies according to personality and area. Officers rarely mentioned supervisors as a source of regulation and sergeants felt that the forms alone did not provide them with evidence to ensure their officers were stopping people within the law and not using their powers in a discriminatory manner. The data shows that officers feel under increased scrutiny in their use of stop and search and worry about complaints being made against them, particularly in relation to racism. In reality complaints are not often substantiated and little action appears to be taken on continued racial disparities, hence PACE seems to have no enforcement mechanism.

In contrast, it is the body of law on stop and seizure rather than administrative controls that are expected to control officers' use of stops in the US. The plethora of cases around stop and search (as illustrated in Appendix 5) provide the parameters under which officers can conduct stops. The sheer number of often-contradictory decisions coming from state, federal and appellate courts and the Supreme Court provide a confusing body of law that it unlikely officers can operationalise. Chapter 4 showed that the protections offered by the Constitution have been repeatedly weakened by rulings that undermine individual

suspicion and allow officers to ask for consent or conduct pretext stops. If the law is broken, evidence may be excluded under the 'exclusionary rule.' The data shows that officers consider this and the possibility of civil legal action as a factor when they make stops. It is unlikely to be a controlling factor as departments do not appear to follow cases on a systematic basis to monitor if individual officers are repeatedly breaking the law. The false perception of legal control is offered as a justification for a lack of administrative controls and more direct supervision. The legal regulations do not determine how police officers act. Yet the law plays an interesting role in officers' conception of what they do. The data showed that for police officers in the US the law itself emerges as a central value; all officers spoke with a reverence for the law and Constitutional rights. The law is seen as constraining their actions and protecting rights. Specifically, enforcement of the law is readily evoked as the principal function of the police and acts as a unifying force amongst officers. They are aware that their legitimacy depends on abiding by legal constructs. This is a 'hollow ideology;' (Herbert 1997) officers view situations through the prism of the law when deciding how to act. But rather than controlling their behaviour, the law provides the means by which officers explain and justify their actions. Incidents become constructed in legal terms. Stops are explained by the reasonable suspicion or probable cause. The data shows officers use standard ways of describing this suspicion, such as 'high crime neighbourhood,' 'involvement in drugs trafficking,' and 'wearing baggy clothes.'

Consent and pretext stops

The use of consent stops represents a major difference between practice in the UK and US. Although there was still evidence that consent stops take place in the UK, this research shows that most stops in the US are conducted by consent and the legal system encourages this. The use of consent bypasses all legal protections. The use of consent has a definite

racialised impact. Bittner (1967) has shown that officers are more likely to target poor and minority individuals who are less likely to feel able to refuse or make official complaints.

This study has shown that the use of pretext stops is also common. The Supreme Court has ruled that as long as officers observe an infraction, no matter how trivial, they have the power to conduct a search regardless of their intention. As noted it is impossible to drive very far without committing a traffic offence; it is equally likely that pedestrians without realising commit offences such as jaywalking, crossing against a signal or misuse of a bus bench. This gives officers extremely wide leeway to act on stereotypes and generalisations.

Suspicion

This research shows how suspicion is generated differently according to individual officers, departments, community contexts and national contexts. Both the UK administrative rules and the US law utilise an idea of ‘reasonable suspicion,’ the idea of individualised suspicion based on behaviour. This is clearly undermined in the US context by rulings that allow automatic frisking for certain categories of crime and pretext stops. The failure of the law to set adequate parameters of reasonable suspicion means in practice that the law provides an elastic resource, upon which officers can choose whether or not to draw. In both countries, there remain vast differences in understanding of the term as evidenced by the different uses and explanations given by officers. In the UK, for some officers the national agenda has brought a greater certainty about what elements are necessary for a stop but for others there remains considerable confusion about the development of grounds and a lack of confidence about using their powers.

The data shows that some stops are made on the basis of legitimate individualised behavioural suspicion. Yet the data also shows that stop and search is sometimes operated on individual stereotypes. English and American officers display commonsense understandings about ethnic differences in offending and generalisations about certain groups' propensity to commit crime, which clearly impacts on who they stop. It is clear in both contexts that stop and search is often being used not to allay individual suspicion of a crime but for other purposes, such as deterring crime, gathering intelligence and breaking up groups of youth. These illegal uses of stops then become justified by their deterrence and reassurance value. Senior officers offer a tautological explanation for these stops, they become justified on the basis that a person might commit a crime rather than evidence that they have.

Police Property

Brogden (1985) suggests that stop and search continues a tradition established prior to the creation of a professional police service that was intended to be used to harass marginal sections of the population, described in the 1824 Vagrancy Act as 'rogues, vagabonds and incorrigible thieves.' As the powers to stop and search were extended in both the UK and US, studies have highlighted the use of these powers against certain sections of each society, which have been labelled 'police property' (Cray 1972). Skolnick (1966: 703) identified those at the receiving end of differential treatment as 'people who do not lead normal lives... this group includes residents of ethnic ghettos, certain types of vagabonds, and persons of known criminal background.' In the UK data, the police refer to 'known offenders' or 'individuals known to the police' and it was evident that previous contact was being used as the basis for stops. In the US, officers also referred to 'regulars' and 'ex-felons' and again used previous contact with the police as justification for stops. It was a

common theme expressed by officers that those who were known to the police were more likely to commit crime thus it was good practice to stop them, thus ‘keeping them on their toes’ and gaining ‘intelligence’ about where they were, what they were doing and who they were with. This approach to stop and search begins with a focus on an individual who has committed or merely been suspected of a crime rather than actually suspecting that a crime is being committed. It becomes a self-fulfilling prophecy, anyone ‘falling into this category stands in danger of achieving the status of ‘permanent suspect’ and become the subject of continued scrutiny’ (Choongh 1997: 46).

Not only do known offenders fall into this category of ‘police property’ but in the US data it was evident that certain groups in society were clearly seen as worthy of police surveillance. Previous studies have shown that the police make the distinction between those sectors of society that are worthy of protection and those who the worthy need to be protected from and deserve to be the subjects of control (Reiner 1985). One American officer identified this group as:

Most people who are walking around here, the homeless population, and the prostitutes and the drug dealers, and the gangbangers, we know these people.
(NT/A/PO/7)

During observations, officers often talked about them being the ‘thin blue line’ protecting society from lawlessness. As Reiner (1985: 95) argues:

The prime function of the police has always been to control and segregate such groups, and they are armed with a battery of permissive and discretionary laws for this purpose. The concern with ‘police property’ is not so much to enforce the law as to maintain order using the law as one resource among others.

It was evident in New Town, that the city ordinances provide the resource for officers to pursue this mission. The observations showed that it was only a certain sector of society were being stopped and arrested based on ordinances against jaywalking and misuse of a

bus bench. Choongh (1997) suggests that a significant amount of police activity cannot be explained by crime control but instead has the objective of social discipline. The police believe that if such groups are stopped and arrested enough, it will reaffirm the power and authority of the police and force those groups into acknowledgement of their place. The continual interaction with these groups serves as ‘proof’ that they have correctly identified the right people. Hence the comments made by officers in the UK that they knew they were stopping the right people as they were pulling out stop forms showing that they had been stopped before.

Intelligence

The efforts to improve the effectiveness of stop and search and reduce the disparities in the UK have focused on making stop and search intelligence-led. Most officers in the UK defined their stops as being driven by the public, often described as intelligence. There is a sense that stops based on calls from the public about people acting suspiciously are ‘safe’ stops, where officers know they have enough grounds to conduct a search. Policy-makers have the notion that intelligence is specific but this research shows that on the ground this is not the case. There is little evidence that intelligence is being used systematically to inform police practices in relation to the use of stop and search. In practice, intelligence is subjective information such as a call reporting that someone is ‘acting suspiciously’ or the fact that a known offender is in a certain place. Officers redefine what is meant by intelligence to bring in old stereotypes and subjective information.

Area-based suspicion

This research shows that stop and search in both countries is often operated on ‘area based suspicion,’ rather than individualised suspicion. This was clearly articulated by the training

programme devised in Amberham, where the sergeant describes a notion of reasonable suspicion that is based on whole areas being defined as 'high crime areas.' Thus this becomes the major ground for suspicion, anyone seen in that area is subject to automatic suspicion. This was also evident in the US, where stop and frisk becomes automatic in certain areas that are defined as 'high crime neighbourhoods.' Keith notes (1993: 199) 'labelling and criminalization by area assumes the nature of a self-fulfilling prophecy, a cumulative spiral of decline that callously victimises the poorer and powerless groups in society.' Once people are in a labelled high crime area everyone in that area is deemed suspicious. Take for example, the two boys stopped in the park in Amberham and couple stopped at night in New Town; these are completely different contexts but illustrate how officers see everyone in certain areas as suspicious. This is clearly racialised and class driven as many of the areas labelled as high crime are poor and minority areas. The result of this type of suspicion is to perpetuate racial disparities in stop rates.

The use of section 60s in parts of Amberham represent an extreme notion of area-based suspicion, which is not based on individual suspicion or intelligence about specific violent crimes at specific locations but instead on an extreme notion of area. In some areas section 60s appear to be authorised on a continuous basis in response to general crime problems in the area, such as street robbery and armed criminality, as opposed to specific incidents or intelligence. Thus section 60 institutionalises area based suspicion. It removes legal and administrative controls so officers on the ground are no longer required to exercise discretion based on reasonable suspicion - instead the discretion has been exercised by the senior officers who authorise the power. There appear to be few guidelines as to what intelligence has been present for the power to be authorised and so officers are not directed

to stop specific people believed to be involved – so officers on the ground who are free to stop at will often fall back on the use of stereotypes and generalisations.

The US data shows significant differences in the use of stop and search between forces and difference areas within forces. This was evident when comparing the downtown areas of both forces (areas A) with other policing areas. In the downtown areas, officers stop and frisk everyone they encounter and consent and pretext stops are used widely in the hope of discovering larger crimes. In other areas officers are selective in who they frisk and make lesser use of consent and pretext stops. One factor that might help to explain this difference is the different nature of populations in each area. In area A the population is perceived as transient and so in need of more proactive policing (not least because the population is less likely to call on the police for service). It is also likely that officers are aware that individuals in this area are less likely to complain about police actions. Other areas have settled communities, with whom the police recognise the need to build relationships. The US data also shows that officers often develop suspicion based on notions of who belongs in an area. The greater degree of residential segregation in the US means that perceptions of belonging are racialised.

Local context

This research has shown that national policy is mediated through a number of levels before it reaches front line officers. These include the force context, which incorporates force policies, practices, traditions and initiatives and a local environment, which include area policies, practices, training, and personnel. The data shows that the local area context, the community structure, operational policies and practices and personnel, has an influence on how officers operate stop and search. In the UK, specifically in Amberham, there are clear

differences in use of stops between areas. Thus in area B there was a gentler approach to stop and search whereas in bordering area C the emphasis was on aggressive use of stop and search including high numbers of section 60s. These differences are particularly evident in the special operation that was observed; this illustrates how a policy that was centrally designed took on a very different operational feel in two adjacent areas as directed by the local context. In the US, there are differences in how stop and search is operationalised between areas. The data showed that in some areas stop and frisk is automatic and arrests are made for minor infractions whereas in other areas frisks were not conducted automatically and certain crimes are privileged over others.

Police objectives/ Police officers as actors

This research has illustrated that officers' personal objectives often play as large a role in determining practice as does the law, national policy and local context. Several themes illustrate this point. Officer safety was a theme that continually emerged in the US and in the special operation conducted in Amberham. In the US, officers would rather break the rules and frisk everyone that they come into contact with, risking the case being thrown out of court rather than risk their safety on a stop. This was condoned and even encouraged by senior officers. Again, this is linked to area-based suspicion as it was clear that in some areas officers are almost socialised into seeing areas as dangerous where other areas that seemed equally as dangerous did not have automatic frisking practices. In Greenville, which had higher percentages of longer-serving officers, many mentioned that due to concerns about their safety they didn't make any stops at all. In Amberham, officers that were drafted in for the special operation were clearly uncomfortable at being in areas they did not know. This resulted in them stopping easy targets so they could show some

productivity and ignoring anyone they perceived as a threat whether suspicion was present or not.

Stop and search is linked strongly with notions of proactive policing and some officers clearly thrive on making possibly dangerous stops in the hope of discovering larger crimes. For some officers it is fundamental to how they define their job and illustrates their expertise in seeing what the public don't and catching offenders on the street. Although in recent years officers have adopted the service industry approach they have clearly not relinquished the role of enforcement and control. Showing productivity in street stops is still used as a performance indicator in the forces studied and for many officers offers a way of increasing their chances of promotion. It is this desire to be proactive that can lead officers to circumvent the law when they feel stops will produce results.

Gould and Mastrofski (2004) suggest that the legitimacy that officers grant to policies and initiatives will impact on whether they choose to follow them. In both UK forces there was considerable anger over the Macpherson Report and the resulting policies. Officers felt that the Report was most relevant to the Metropolitan Police Service but had labelled them all racist. The national agenda is perceived as an externally imposed agenda which has little relevance to their policing areas yet has been adopted by senior officers who fail to support them in their stop and search use. Thus some officers talked about 'playing the game'- refusing to do stop and search unless there were 'safe grounds' so they could avoid complaints or allegations of racism.

Institutional racism

This thesis asks whether institutional racism helps us to explain empirically the racial disparities in stop and search use in the UK and US. The concept has been powerful at points in history because it has moved the discussion away from individual racism and sought to show how racist discourses can become embodied in the structures of social formation and institutional practices. The Macpherson report was instrumental in placing institutional racism at the top of the policing agenda and providing an impetus for changes to the way stop and search operates. Chapter 2 outlined the weaknesses that have been present from the conception of the term. In its various uses institutional racism has become conceptually stretched to cover different levels of analysis, including social formation, single institutions and individuals. Yet, the term is also inflated, the focus of black disadvantage encompassing practices and processes which cannot be described as racist. The term conflates beliefs, actions and processes, focusing on outcomes as proof that institutional racism exists, irrespective of intention, and sidestepping issues of culpability. Although recognising the problems of definition, Macpherson's insistence that racism could be unintentional and covert avoided the task of empirically identifying causal relations leading to discriminatory outcomes. Thus the concept lacks analytical power.

In light of these problems, there have been attempts to provide a deflated and more analytically robust interpretation of institutional racism. Singh (2000) argues that it is important that the boundaries of the concept are shrunk, to avoid any inflation with class and gender divisions; instead institutional racism must be seen as solely the product of racist discourse. Miles and Brown (2003: 109 - 110) offer a precise interpretation using the term institutional racism to apply to two sets of circumstances. Firstly, circumstances where exclusionary practices arise from, and therefore embody, a racist discourse but

which may no longer be explicitly justified by that discourse and secondly, circumstances where an explicitly racist discourse is modified in such a way that the racist content is eliminated, but other words carry the original meaning. In both circumstances the racist discourse becomes silent but remains embodied in the continuation of exclusionary practices or in the use of a new discourse. Miles and Brown go on to explain (2003: 110):

[T]he concept of institutional racism does not refer to the exclusionary practices *per se* but to the fact that a once present discourse is now absent and that it justified or set in motion exclusionary practices therefore institutionalise that discourse. An ideology of racism is therefore embodied in a set of practices. This warrants classification as institutional racism only where the process of determinacy can be identified. Thus in order to determine the presence or otherwise of institutional racism, one assesses not the consequences of actions but the history of discourse and its manner and moment of institutionalisation in order to demonstrate that prior to the silence (or transformation), a racist discourse was articulated.

This interpretation still fails to explain the relationship between motive and outcome in a consistent and effective way. It fails to account for organisations whose practices are not based on racist ideologies but still produce racist outcomes or for individuals in organisations who may have racist intentions and are using neutral structures to pursue them. Singh notes that for the concept to have explanatory power, it has to be able to point us in the direction of particular structures and processes that lead to racialised divisions. As noted, racial disparities are often taken as evidence that institutional racism exists. Singh (2000: 36) argues ‘if we are to sustain the claim that institutional racism exists, we have to empirically demonstrate the causal relationships to racialised divisions.’ The danger with the concept of institutional racism is that individual institutions have been reified. We need to understand the role of social actors in institutions, who shape the policies and processes of an institution, and in whose interests they are operating.

The data from this research shows that discriminatory outcomes in stop and search are the product of not only the action of individual officers but also national and local policies and

practices. These policies and practices are devised and implemented by actors. The discriminatory outcomes not only result from racism but also prejudice based on class and gender. The concept of institutional racism oversimplifies these complex relationships. Layder's (1997) theory of social domains is useful in dissecting the different levels of analysis that must be considered to illustrate discriminatory outcomes. There are four principal domains, which he terms psychobiography, situated activity, social settings and contextual resources. Each domain although interdependent with the other has its own distinct characteristics and a certain measure of independence from the others. In the field of stop and search, psychobiography refers to the personal feelings, attitudes and predispositions of individual officers. The research has shown that officers have personal agendas, such as beliefs about certain groups' proclivity to commit crime, concern over personal safety, desire to be proactive or seek promotion and anger at certain policies that will impact on their use of stops. Situated activity is characterised by the face-to-face interactions between the police and individuals during stop and search. The communicative interchanges that take place can influence the outcome of the encounter. If officers follow the GOWISELY procedure and give a legitimate reason for the stop, those on the receiving end are less likely to feel they have been discriminated against. Social setting refers to the setting in which officers operate, the rules and regulations that govern working practices and the authority relations within police stations and forces. This research has shown that the laws, policies and working practices around stop and search create gaps that allow officers to pursue racist or sexist agendas. The final domain is contextual resources, which refers to the society-wide distribution and ownership of resources along gender, racialised and class lines and the wide variety of cultural resources that form knowledge in society. It is clear that the police utilise a practice of area-based suspicion in stop and search, focusing on poor and minority areas that are perceived to have

high crime rates. The composition of those areas reflects wider racialised pattern of discrimination. Analysis of stop and search across these different domains has allowed us to begin to identify in what contexts people draw on race ideas and what features of their social position allows them to insert these ideas into the policies and processes in which they participate. This allows us to apportion responsibility on which policy responses can be built.

Macpherson failed to identify what ‘processes, attitudes and behaviour’ were creating the disparities in stop and search figures and who is responsible for holding the beliefs on behalf of the organisation and developing and implementing processes. Although he moved the emphasis away from the few ‘rotten apples’ identified by Scarman his emphasis on unintended or unwitting acts of individuals means that no one is held directly accountable. As Rowe (2004) notes it is hard to discern particular responses that are qualitatively distinct from previous efforts to tackle racism. The broader structural focus that Macpherson’s use of the concept of institutional racism invokes has not been evident in the recommendations. The recommendations instead provide the appropriate responses to earlier models of racism that associated the problem with individual ‘rotten apples.’ For example the efforts to monitor more closely the use of stop and search have little to do with the institutional aspects of racism identified by the report.

I am unable to resolve the definitional debate surrounding stop and search. This thesis has shown that the concept of institutional racism fails to explain the disparities in stop and search use in the UK and US. I suggest instead that the concept of *institutionalised discrimination* provides a more precise explanation of stop and search disparities. This allows us to take the focus off solely individuals and show how discrimination has been

embedded into the policy and practice of the police. While also allowing us to develop remedies as we can locate who is doing the institutionalising, who is devising and implementing the policies and practices that are leading to such outcomes.¹³

¹³ It is not the primary purpose of this thesis to make policy recommendations but there are several that are pertinent coming out of this research. Laws that circumvent the ideal of individualised reasonable suspicion, such as section 60 of the Criminal Justice and Public Order Act 1994, and section 44(1) and (2) of the Terrorism Act 2000 in the UK, and the Supreme Court decisions of *US v. Cortez*, 449 U.S. (1981), *Whren v. United States*, 116 S. Ct. 1769 (1999), and *Illinois v. Wardlow*, 528 U.S. (2000), which allow automatic frisks for certain categories of crime, searches on the basis of location, consent stops and pretext stops in the US, should be abolished. These clearly lead to racialised outcomes and can not be regulated to ensure fairness and accountability. It is unlikely that reasonable suspicion can be practically defined to cover all situations. But the law should proscribe certain actions as falling outside reasonable suspicion such as using the powers to gain intelligence, disrupt groups of youth or for public reassurance.

REFERENCES

Illinois v. Wardlow, 528 U.S. (2000), Supreme Court.

US v. Cortez, 449 U.S. (1981), Supreme Court.

Whren v. United States, 116 S. Ct. 1769 (1996), Supreme Court.

1990 Trust (2004). Stop and Search: The Views and Experiences of Black Communities on Complaining to the Police. London, Metropolitan Police Authority.

Allen, R. J. (1976). "The police and substantive rulemaking: reconciling principle and expediency." University of Pennsylvania Law Review: 62 - 118.

Alpert, G. P. and R. Dunham (2004). Understanding Police Use of Force - Officers, Suspects and Reciprocity. Cambridge, Cambridge University Press.

American Civil Liberties Union (1999). Driving while Black: Racial Profiling on our Nation's Highways. New York, American Civil Liberties Union.

Amnesty International (2004). Threat and Humiliation - Racial Profiling, Domestic Security, and Human Rights in the United States. New York, Amnesty International USA.

Anthias, F. and N. Yuval-Davis (1993). Racialised Boundaries: Race, Nation, Gender, Colour and the Anti-Racist Struggle. London, Routledge.

Associated Press (1999). N.J. state police head fired for remark on minorities. The Boston Globe. Boston.

Baldwin, R. and R. Kinsey (1985). "Rules, realism and the police act." Critical Social Policy **12**: 89 - 102.

Baltimore Police Department (2001). Citizen/Police Contact Receipt Analysis Report, 01/01/2001 - 06/30/2001. Baltimore, Baltimore Police Department.

Banks, R. R. (2003). "Beyond Profiling: Race, Policing and the Drug War." Stanford Law Review **56**: 571 - 603.

Banton, M. (1996). The Racism Problematic. The Racism Problematic: Contemporary Sociological Debates on Race and Ethnicity. R. Barot. Lampeter, Edwin Mellen: 20 - 43.

Barlow, D. E. and M. H. Barlow (2002). "Racial Profiling: A Survey of African American Police Officers." Police Quarterly **5**(3): 334 - 358.

Bast, C. M. (1997). "Driving while Black: Stopping motorists on a subterfuge." Criminal Law Bulletin **33**(457 - 489).

Batton, C. and C. Kadleck (2004). "Theoretical and Methodological Issues in Racial Profiling Research." Police Quarterly **7**(1): 30 - 64.

BBC (2003). The Secret Policeman, BBC1.

Bender, S. W. (2002). "Sight, Sound, and Stereotype: The War on Terrorism and its Consequences for Latinos/os." Oregon Law Review **81**: 1153 - 1178.

Bittner, E. (2005). Florence Nightingale in pursuit of Willie Sutton: a Theory of the Police. Policing - Key Readings. T. Newburn. Devon, Willan Publishing: 150-172.

Black, D. and A. Reiss (1967). Patterns and behavior in police and citizen transactions. Studies of crime and law enforcement in major metropolitan areas. Washington, D.C., U.S. Government Printing Office. 2: 1 - 139.

Bland, N., J. Miller, et al. (2000). Upping the PACE? An evaluation of the recommendations of the Stephen Lawrence Inquiry on stops and searches. London, Home Office.

Bottomley, K., C. Coleman, et al. (1991). The Impact of PACE - Policing in a Northern Force. Hull, Centre for Criminology and Criminal Justice.

Bowling, B. and C. Phillips (2002). Racism, Crime and Justice. Harlow, Pearson Education Limited.

Bowling, B. and C. Phillips (2003). Policing ethnic minority communities. Handbook of policing. T. Newburn. Devon, Willan Publishing: 528 - 555.

Bridges, L. (2001). "Race, law and the state." Race and Class 43(2): 61 - 76.

Brogden, A. (1981). "'Sus' is dead: but what about 'Sas'?" New Community 9(1): 44 - 52.

Brown, D. (1997). PACE ten years on: a review of the research. London, Home Office.

Buerger, M. E. and A. Farrell (2002). "The Evidence of Racial Profiling: Interpreting Documented and Unofficial Sources." Police Quarterly 5(3): 272-305.

Cain, M. E. (1973). Society and the policeman's role. London, Routledge and Kegan Paul.

California State Highway Patrol (2000). Public Contacts Demographic Data Summary Report to the Governor, California State Patrol.

Carter, B. (2000). Realism and Racism: Concepts of race in sociological research. London, Routledge.

Cathcart, B. (1999). The Case of Stephen Lawrence. London, Penguin Books.

Centrex (2002). Stops and searches: Constables' pre-read. Hampshire, Centrex.

Chambliss, W. J. (1999). Power, Politics and Crime. Boulder, Westview Press.

Choongh, S. (1997). Policing As Social Discipline. Oxford, Clarendon.

Cleary, J. (2000). Racial Profiling Studies in Law Enforcement: Issues and Methodologies. St. Pauls, Minnesota House of Representatives, Research Department.

Cohen-Vogel, D. and B. Doss (2002). Vehicle Stops and Race: A Study and Report in Response to Public Charter 910 of 2000. Tennessee, Office of Research, Comptroller of the Treasury, State of Tennessee.

Cole, D. (1999). No Equal Justice: Race and Class in the American Criminal Justice System. New York, The New Press.

Commission For Racial Equality (2004). A Formal Investigation of the Police Service in England and Wales - An interim report. London, Commission For Racial Equality.

Cordner, G., B. Williams, et al. (2002). Vehicle stops in San Diego: 2001 (Report). San Diego, CA., Eastern Kentucky University, Vanderbilt University, San Diego State University.

Corsianos, M (2003). "Discretion in Detectives' Decision Making and 'High Profile' cases". Police Practice and Research, 4(3): 301-314.

Cray, E. (1972). The Enemy in the Streets. New York, Anchor.

Demuth, C. (1978). 'Sus' a report on the Vagrancy Act 1824. London, Runnymede Trust.

Dixon, D. (1997). Law in Policing: Regulation and Police Practices. Oxford, Clarendon.

Dixon, D., C. Coleman, et al. (1990). "Consent and the Legal Regulation of Policing." Journal of Law and Society 17(3): 345 - 362.

Dodd, V. (2005). Surge in stop and search of Asian people after July 7. The Guardian: 7.

Dunham, R., G. P. Alpert, et al. (2005). "Transforming Citizens into Suspects: Factors that Influence the Formation of Police Suspicion." Police Quarterly 8(3): 366 - 393.

Durose, M. R., E. L. Schmitt, et al. (2005). Contacts between the Police and the Public: Findings from the 2002 National Survey. Washington D.C., US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

Duster, T. (2004). Selective Arrests, an Ever-Expanding DNA Forensic Database, and the Spector of an Early Twenty-First-Century Equivalent of Phrenology. The

Technology of Justice: DNA and the Criminal Justice System. D. Lazer. Cambridge, MA, MIT Press: 1 - 16.

Engel, R. S., J. M. Calnon, et al. (2002). "Theory and Racial Profiling: Shortcomings and Future Directions in Research." Justice Quarterly **19**: 201 - 225.

Ericson, R. V. (1982). Reproducing Order: A Study of Police Patrol Work. Toronto, University of Toronto Press.

ESRC (2003). Guidelines on Copyright and Confidentiality: Legal Issues for Social Science Researchers.

Fagan, J. (2004). "Suspect Searches: Assessing Police Behavior Under the U.S. Constitution (Editorial Introduction)." Criminology and Public Policy **3**(3): 309-314.

Farrell, A., J. McDevitt, et al. (2004). Massachusetts Racial and Gender Profiling Final Report. Massachusetts, Institute on Race and Justice, Northeastern University.

Farrell, A., J. McDevitt, et al. (2002). "Moving Police and Community Dialogues Forward through Data Collection Task Forces." Police Quarterly **5**(3): 359-379.

Farrell, A., J. Rumming, et al. (2005). New Challenges in Confronting Racial Profiling in the 21st Century: Learning from Research and Practice, Institute on Race and Justice, Northeastern University.

Federal Highway Administration (1995). Our nation's travel: 1995 Nationwide Personal Transportation Survey, early results report. Washington D.C., U.S. Department of Transportation.

Fiala, I. J. (2003). "Anything new? The Racial Profiling of Terrorists." Criminal Justice Studies **16**(1): 53 - 58.

FitzGerald, M. (1999). Searches in London, Under s1 of the Police and Criminal Evidence Act 1984. London, Metropolitan Police Service (MPS).

FitzGerald, M. and R. Sibbitt (1997). Ethnic monitoring in police forces: A beginning. London, Home Office.

Foster, J., T. Newburn, et al. (2005). Assessing the impact of the Stephen Lawrence Inquiry - Home Office Research Study 294. London, Home Office.

Fraser, C. (2005). Are police misusing stop-and-search? [BBC News Online](#).

Fridell, L. (2004). By The Numbers: A Guide for Analyzing Race Data from Vehicle Stops. Washington, D.C., Police Executive Research Forum.

Fridell, L., R. Lunney, et al. (2001). Racially Biased Policing: A Principled Response. Washington, D.C., Police Executive Research Forum.

Fyfe, J. J. (2004). "Stops, Frisks, Searches, and the Constitution." [Criminology and Public Policy](#) 3(3): 379-396.

Gallup Jr., G. (1999). The Gallup Poll: Public Opinion 1999, Scholarly Resources Inc.

Glasser, I. (2000). "American Drug Laws: The New Jim Crow. The 1999 Edward C. Sobota Lecture." [Albany Law Review](#) 63(703 - 728).

Gould, J. B. and S. D. Mastrofski (2004). "Suspect Searches: Assessing Police Behavior Under the U.S. Constitution." [Criminology and Public Policy](#) 3(3): 315-362.

Graham, J. and B. Bowling (1995). Young People and Crime. London, Home Office.

Green, S. and R. Jerome (2002). Monitors Report on University of Cincinnati Police Vehicle Stop Study. Cincinnati, Cincinnati City Council.

Gross, S. R. and K. Y. Barnes (2002). "Road Work: Racial Profiling and Drug Interdiction on the Highway." Michigan Law Review **101**: 651 - 756.

Gross, S. R. and D. Livingston (2002). "Racial Profiling Under Attack." Columbia Law Review **102**: 1413- 1445.

Gunaratnam, Y. (2003). Researching 'Race' and Ethnicity - Methods, Knowledge and Power. London, Sage Publications.

Hansen, O. (1986). A balanced approach? The Police - Powers, Procedures and Proprieties. J. Benyon and C. Bourn. Oxford, Pergamon Press: 103 - 114.

Harris, D. A. (1997). "'Driving while Black' and all other Traffic Offences: The Supreme Court and Pretextual Traffic Stops." The Journal of Criminal Law and Criminology **87**(2): 544 - 582.

Harris, D. A. (2001). "Symposium Article: When Success Breeds Attack: The Coming Backlash Against Racial Profiling Studies." Michigan Journal of Race and Law **6**: 237 - 263.

Harris, D. A. (2002). Profiles in Injustice - Why Racial Profiling Cannot Work. New York, The New Press.

Harris, D. A. (2003). Let's Look at What Counts: Racial profiling doesn't stop common criminals. It won't stop terrorists, either. Legal Times: 60 - 65.

Havis, S. and D. Best (2004). Stop and Search Complaints (2000-2001). London, Police Complaints Authority.

Heffernan, W. C. and R. W. Lovely (1991). "Evaluating the Fourth Amendment Exclusionary Rule: The Problem of Police Compliance with the Law." University of Michigan Journal of Law Reform 24: 311-380.

Herbert, S. (1997). Policing Space: Territoriality and the Los Angeles Police Department. Minneapolis, University of Minnesota Press.

Holdaway, S. (1983). Inside the British Police. Oxford, Basil Blackwell.

Home Office (1995). Statistical bulletin on the Operation of Certain Police Powers Under PACE - England and Wales, 1994. London, Home Office.

Home Office (1999). The Stephen Lawrence Inquiry: The Home Secretary's Action Plan. London, Home Office.

Home Office (2005). Statistics on Race and the Criminal Justice System - 2004. London, Home Office.

Home Office (2006a). Race and the Criminal Justice System: An Overview to the Complete Statistics, 2004 - 5. London, CJS Race Unit, Home Office.

Home Office (2006b). Statistics on Race and the Criminal Justice System, 2004 - 2005. London, CJS Race Unit, Home Office.

Hunt, J. (1984). "The Development of Rapport through the Negotiation of Gender in Fieldwork among Police." Human Organisation 43(4): 283 - 296.

Innes, M. (1999). "'An Iron Fist in an Iron Glove?' The Zero Tolerance Policing Debate." The Howard Journal 38(4): 397 - 410.

Institute of Race Relations (1979). *Policing Against Black People*. London, IRR.

Institute on Race and Poverty (2000). *Report on Traffic Stop Data Collected by the Saint Paul Police Department*. Minneapolis, MN, University of Minnesota Law School.

John, T. and M. Maguire (2004). *The National Intelligence Model: Early Implementation Experience in Three Police Force Areas*. Cardiff, University of Cardiff.

Kappeler, V. (2001). Critical Issues In Police Civil Liability. Prospect Heights, IL, Waveland Press.

Karmen, A. (2004). Zero tolerance in New York City: hard questions for a get-tough policy. Hard Cop, Soft Cop - Dilemmas and Debates in Contemporary Policing. R. H. Burke. Devon, Willan Publishing: 23 - 29.

Keenan, R. (2005). "Stop and Search: the Leicestershire Experience." Justice Initiatives **June 2005**: 82 - 87.

Kennedy, R. (1997). Race, Crime and the Law. New York, Vintage Books.

Kennedy, R. (1999). "'Suspect Policy'." The New Republic **13 September 1999**.

Kim, S. (1996). "Gangs and Law Enforcement: The Necessity of Limiting the Use of Gang Profiles." Boston University Public Interest Law Journal **5**: 265 - 295.

Knowles, J., N. Persico, et al. (2001). "Racial Bias in Motor Vehicle Searches: Theory and Evidence." Journal of Political Economy **109**: 203.

Lamberth, J. (1994). Revised statistical analysis of the incidence of police stops and arrests of black driver/travellers on the New Jersey Turnpike between exits or interchanges 1 and 3 from the years 1988 through 1991, Temple University (Unpublished report).

Lamberth, J. (1996). A Report to the ACLU. New York, American Civil Liberties Union.

Lamberth, J. (2005). Benchmarking, Methodology and Analysis. Open Society Justice Initiative: Addressing Ethnic Profiling and Discrimination in Policing in Europe. Budapest, Hungary.

Lambeth Community-Police Consultation Group (2005). A Submission from Lambeth Community-Police Consultative Group to the MPA Stop and Search Scrutiny. London, Lambeth Community-Police Consultation Group.

Lange, J. E., M. B. Johnson, et al. (2005). "Testing the Racial Profiling Hypothesis for Seemingly Disparate Traffic Stops on the New Jersey Turnpike." Justice Quarterly **22**(2): 193 - 223.

Leadership Conference on Civil Rights Education Fund (2004). Wrong Then, Wrong Now, Racial Profiling Before and After September 11, 2001. Washington D.C., Leadership Conference on Civil Rights Education Fund.

Lustgarten, L. (2002). "The Future of Stop and Search." Criminal Law Review: 603 - 618.

MacDonald, H. (2001). "The Myth of Racial Profiling." City Journal **11**(2): 14-27.

Macpherson, S. W. (1999). The Stephen Lawrence Inquiry, CM 4262-I. London, The Stationary Office.

Manning, P. K. (1977). Police Work. Cambridge, Mass., MIT Press.

Mauer, M. (1999). Race To Incarcerate. New York, The New York Press.

Mawby, R. I. (1990). Comparative Policing Issues - The British Experience In International Perspective. London, Unwin Hyman.

May, T. (1997). Social Research: Issues, methods and Process. Buckingham, Open University Press.

McBarnet, D. (1981). Conviction. London, Macmillan.

McCorkle, R. C. (2003). A.B. 500 Traffic Stop Data Collection Study - A summary of Findings. Las Vegas, Office of the Attorney General of the State of Nevada.

McLaughlin, E. and K. Murji (1991). "After the Stephen Lawrence Report." Critical Social Policy **19**(3): 371 - 385.

McMahon, J., J. Garner, et al. (2002). How to correctly collect and analyze racial profiling data: Your reputation depends on it! Washington D.C., Community Orientated Policing Services (COPS), U.S. Department of Justice.

Meehan, A. J. and M. C. Ponder (2002). "Race and Place: The Ecology of Racial Profiling African American Motorists." Justice Quarterly **19**(3): 399 - 430.

Memory, J. M. (1988). Line Police Officer Knowledge of Search and Seizure Law: An Exploratory Multi-City Test in the United States, 1986-1987. Michigan, Inter-University Consortium of Political and Social Research.

Metropolitan Police Authority (2004). Report of the MPA Scrutiny on MPS Stop and Search Practice. London, Metropolitan Police Authority.

Miles, R. (1989). Racism. London, Routledge.

Miles, R. and M. Brown (2003). Racism. London, Routledge.

Miller, J., N. Bland, et al. (2000). The Impact of Stops and Searches on Crime and the Community. London, Home Office.

Miller, J., N. Bland, et al. (2001). "A Challenge for Police-Community Relations: Rethinking Stop and Search in England and Wales." European Journal on Criminal Policy and Research 9: 71 - 93.

Miller, J. G. (1996). Search and Destroy - African-American Males in the Criminal Justice System. Cambridge, Cambridge University Press.

Missouri Attorney General (2000). Annual Report on Missouri Traffic Stops. Missouri, Missouri Attorney General.

Muir, H. (2003). Black police plan bar on Met ethnic recruiting. The Guardian.

Muir, W. K. (1977). The Police: Streetcorner Politicians. Chicago, Chicago University Press.

MVA and J. Miller (2000). *Profiling Populations Available for Stops and Searches*. London, Home Office.

NACRO (1997). *Policing Local Communities - The Tottenham Experiment*. London.

Norris, C. (1993). Some Ethical Considerations on Field-Work with the Police. Interpreting the field - Accounts of ethnography. D. Hobbs and T. May. Oxford, Clarendon Press: 123 - 143.

Norris, C., N. Fielding, et al. (1992). "Black and blue: an analysis of the influence of race on being stopped by the police." British Journal of Sociology **43**(2): 207 - 224.

Northeastern Data Collection Center www.racialprofilinganalysis.neu.edu, last accessed 10/01/2006.

Novak, K. J. (2004). "Disparity and Racial Profiling in Traffic Enforcement." Police Quarterly **7**(1): 65 - 96.

Office of the Attorney General of the State of New York (1999). *The New York City Police Department's "Stop and Frisk" Practices: A Report to the People of the State of New York from the Office of the Attorney General*. New York, The Office of the Attorney General.

Papadopoulos, I. and S. Lees (2002). "Developing Culturally Competent Researchers." Journal Of Advanced Nursing **37**(3): 258 - 264.

Parenti, C. (1999). Lockdown America - Police and Prisons in the Age of Crisis. London, Verso.

President's Commission on Law Enforcement and Administration of Justice (1967). *Task Force Report: The Police*. Washington, D.C., Government Printing Office.

Quinton, P., N. Bland, et al. (2000). *Police Stops, Decision-making and Practice*. London, Home Office.

Quinton, P. and J. Olagundoye (2004). *An evaluation of the phased implementation of the recording of police stops: in response to recommendation 62 of the Stephen Lawrence Inquiry*. London, Home Office.

Ramirez, D., J. Hoopes, et al. (2003). "Defining Racial Profiling in a Post-September 11 World." American Criminal Law Review **40**: 1195-1240.

Ramirez, D., J. McDevitt, et al. (2000). *A Resource Guide on Racial Profiling Data Collection System: Promising Practices and Lessons Learned*. Washington, D.C., US Department of Justice.

Ramsay, M. and S. Partridge (1999). *Drug Misuse Declared in 1998: Results from the British Crime Survey*. London, Home Office.

Reiner, R. (1985). The Politics of the Police. Brighton, Wheatsheaf.

Roberts, D. E. (1999). "Foreword: Race, Vagueness, and the Social Meaning of Order-Maintenance Policing." Journal of Criminal Law and Criminology **89**(775 - 836).

Rojek, J., R. Rosenfeld, et al. (2004). "The influence of driver's race on traffic stops in Missouri." Police Quarterly **7**(1): 126 - 147.

Rowe, M. (2004). Policing, Race and Racism. Devon, Willan Publishing.

Royal Commission on Criminal Procedure (1981). *Chairman Sir Cyril Phillips: Report*. Cmnd 8092. London, HMSO.

San Diego Police Department (2001). Vehicle Stop Study Year End Report 2000. San Diego, San Diego Police Department.

San Jose Police Department (2000). Vehicle Stop Demographics Study: Second Report. San Jose, CA, San Jose Police Department.

Sanders, A. and R. Young (2000). Criminal Justice. London, Butterworths.

Scarman, L. (1981). The Brixton Disorders, 10-12 April 1981, (The Scarman Report), Cmnd 8427. London, Home Office Stationary Office.

Schlosberg, M. (2002). A Department in Denial: The San Francisco Police Department's Failure to Address Racial Profiling. San Francisco, CA, American Civil Liberties Union.

Shiner, M. (2006). National Implementation of the Recording of Police Stops. London, Home Office. http://police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/Implementation_of_recording.pdf.

Shuford, R. T. (1999). "Civil Rights in the Next Millennium: Any way you slice it: Why Racial Profiling is Wrong." St. Louis University Public Law Review **18**: 371-385.

Sivanandan, A. (1985). "RAT and the degradation of black struggle." Race and Class **26**(4): 1 - 33.

Skolnick, J. (1966). Justice Without Trial. New York, Wiley.

Smith, D. (1986). The framework of law and policing practice. The Police - Powers, Procedures and Proprieties. J. Benyon and C. Bourn. Oxford, Pergamon Press: 85 - 94.

Smith, D. (1994). Race, Crime and Criminal Justice. The Oxford Handbook of Criminology. M. Maguire, R. Morgan and R. Reiner. Oxford, Clarendon.

Smith, D. (1997). Ethnic Origins, Crime and Criminal Justice in England and Wales. Ethnicity, Crime and Immigration: Comparative and Cross-National Perspectives. Crime and Justice: A Review of Research. M. Tonry. Chicago, University of Chicago Press. 21.

Smith, D. and J. Gray (1983). Police and People in London. London, Policy Studies Institute. 4.

Smith, M. R. and M. Petrocelli (2001). "Racial profiling? A multivariate analysis of police traffic stop data." Police Quarterly 4: 4 - 27.

Social Research Association (2003). A Code of Practice for the Safety of Social Researchers.

Stanko, E. A. (1998). Making the Invisible Visible in Criminology: A Personal Journey. Thinking about Criminology. S. Holdaway and P. Rock. London, UCL.

Statewatch (2000). "Re-interpreting stop and search statistics." Statewatch 10(5): 25-27.

Statewatch (2004). "UK: Ethnic Injustice." Statewatch 14(3/4): 16-17.

Stone, R. (1986). Police powers after the Act. The Police - Powers, Procedures and Proprieties. J. Benyon and C. Bourn. Oxford, Pergamon Press: 53 - 60.

Stop and Search Action Team (SSAT) (2005). Stop and Search Manual. London, Home Office.

Stuntz, W. J. (2002). "Local Policing After The Terror." Yale Law Journal **111**: 2137 - 2179.

Terry v. Ohio 392 U.S. 1 (1968), Supreme Court.

Texas Department of Public Safety (2000). Traffic Stop Data Report. Texas, Texas Department of Public Safety.

Thomas, D. (2002). 1st Annual Report Denver Police Department Contact Card Data Analysis, June 1 2001 through May 31, 2002. Denver, CO, University of Colorado at Denver.

Tonry, M. (1995). Malign Neglect - Race, Crime and Punishment in America. Oxford, Oxford University Press.

Tyler, T. R. and C. J. Wakslak (2004). "Profiling and Police Legitimacy: Procedural Justice, Attributions of Motive, and Acceptance of Police Authority." Criminology **42**(2): 253 - 281.

U.S. Customs Service (1998). Personal Searches of Air Passengers Results: Positive and Negative, Fiscal Year 1998, U.S. Customs Service.

U.S. Department of Justice (2003). Racial Profiling Fact Sheet. Washington, D.C., U.S. Department of Justice.

Van Maanen, J. (1978). On Watching the Watchers. Policing: A View from the Streets. P. K. Manning and J. Van Maanen. Santa Monica, CA, Goodyear: 309 - 349.

Verniero, P. and P. Zoubek (1999). Interim Report of the State Police Review Team Regarding Allegations of Racial Profiling. New Jersey, State Review Team.

Waddington, P. A. J. (1983). Are the police fair? Research paper 2. London, Social Affairs Unit.

Waddington, P. A. J., K. Stenson, et al. (2002). Disproportionality in police stop and search in Reading and Slough, Thames Valley Police (unpublished).

Waddington, P. A. J., K. Stenson, et al. (2002). Disproportionality on police stop and search in Reading and Slough, Thames Valley Police (unpublished).

Waddington, P. A. J., K. Stenson, et al. (2004). "In Proportion: Race, and Police Stop and Search." British Journal of Criminology 44: 889 - 914.

Walker, S. (2001). "Searching for a Denominator: Problems with Police Traffic Stop Data and an Early Warning System Solution." Justice Research and Policy 3: 63 - 95.

Washington State Patrol (2001). Report to the legislature on routine traffic stop data. Seattle, Washington State Patrol and Criminal Justice Training Commission.

Westmarland, L. (2001). "Blowing the Whistle on Police Violence - Gender, Ethnography and Ethics." British Journal of Criminology 41: 523 - 535.

Willis, C. (1983). The Use, Effectiveness and Impact of Police Stop and Search Powers. London, Home Office.

Wilson, D., Sharp D. et al. (2006). Just Justice - Serve and Protect? Black young people's experiences of policing in the community. London, The Children's Society.

Withrow, B. L. (2004). "A Comparative Analysis of Commonly Used Benchmarks in Racial Profiling: A Research Note." Justice Research and Policy 6(1): 71-92.

Young, J. (1994). Policing the Streets: Stops and Searches in North London. Middlesex, Centre for Criminology, Middlesex University.

Zingraff, M. T., M. Mason, et al. (2000). Evaluating North Carolina State Highway Patrol Data: Citation, Warnings and Searches in 1998, North Carolina Department of Crime Control and Public Safety, North Carolina State Highway Patrol.

APPENDIX 1: SUMMARY OF MAIN STOP AND SEARCH POWERS

Power	Object of search	Extent of search	Where exercisable
Unlawful articles general			
1. Public Stores Act 1875, s6	HM Store stolen or unlawfully obtained	Persons, vehicles and vessels	Anywhere where the constabulary powers are exercisable
2. Firearms Act 1968, s47	Firearms	Persons and vehicles	A public place, or anywhere in the case of reasonable suspicion of offences of carrying firearms with criminal intent or trespassing with firearms.
3. Misuse of Drugs Act 1971, s23	Controlled drugs	Persons and vehicles	Anywhere
4. Customs and Excise Management Act 1979, S163	Goods: (a) on which duty has not been paid; (b) being unlawfully removed, imported or exported; (c) otherwise liable to HM Customs and Excise	Vehicles and vessels only	Anywhere
5. Aviations Security Act 1982, s27(1)	Stolen or unlawfully Obtained goods	Airport employees and Vehicles carrying airport employees or aircraft or any vehicle in a cargo area whether or not carrying an employee	Any designated airport
6. Police and Criminal Evidence Act 1984, s1	Stolen goods; articles for use In certain Theft Act offences; Offensive weapons, including bladed or sharply-pointed articles (except folding pocket knives with a bladed cutting edge not exceeding 3 inches)	Persons and vehicles	Where there is public access
	Criminal Damage: Articles Made, adapted or intended for use in destroying or damaging property	Persons and vehicles	Where there is public access
Police and Criminal Evidence Act 1984, s6(3) (by a constable of the United Kingdom Atomic Energy Authority Constabulary in respect of Property owned or controlled by British Nuclear plc	HM stores (in the form of goods and chattels belonging to British Nuclear plc)	Persons, vehicles and vessels	Anywhere where the constabulary powers are exercisable

7. Sporting events (Control of Alcohol etc.) Act 1985, s7	Intoxicating liquor	Persons, coaches and trains	Designated sports grounds or coaches and trains travelling to or from a designated sporting event.
8. Crossbows Act 1987, s4	Crossbows or parts of crossbows (except crossbows with a draw weight of less than 1.4 kilograms)	Persons and vehicles	Anywhere except dwellings
9. Criminal Justice Act 1987, s4	Offensive weapons, bladed or sharply pointed article	Persons	School premises
Evidence of game and wildlife offences			
10. Poaching Prevention Act 1862, s2	Game or poaching equipment	Persons and vehicles	A public place
11. Deer Act 1991, s12	Evidence of offences under the Act	Persons and vehicles	Anywhere except dwellings
12. Conservation of Seals Act 1970, s4	Seals or hunting equipment	Vehicles only	Anywhere
13. Badgers Act 1992, s11	Evidence of offences under the Act	Persons and vehicles	Anywhere
14. Wildlife and Countryside Act 1981, s19	Evidence of wildlife offences	Persons and vehicles	Anywhere except dwellings
Other			
15. Terrorism Act 2000, s43	Articles which may constitute Evidence that a person is a terrorist	Persons	Anywhere
16. Terrorism Act 2000, s44(1)	Articles of a kind which could be used in connection with terrorism	Vehicle, driver and passengers	Anywhere within an authorised area
17. Terrorism Act 2000, s44(2)	Articles of a kind which could be used in connection with terrorism	Pedestrians	Anywhere within an authorised area
18. Paragraph 7 of the Schedule 7 of the Terrorism Act 2000	Persons on board a ship or aircraft who should be questioned under Para 2 (to determine whether they fall within the definition in section 40(1)(b))	Ships, aircrafts and anything On a ship or an aircraft	Ports and airports
19. Paragraph 8 of the Schedule 7 to the Terrorism Act 2000	To determine whether a person being questioned under Para 2 falls within the definition in section 40(1)(b)). Sub-paragraph (2) deals with searches in the border area.	Persons and their possessions, ships, aircraft, vehicles in the border area	Ports and airports, the border Area between Northern Ireland and the Republic of Ireland
20. Paragraph 7 and 8 of the Schedule 7 to the Terrorism Act 2000	Anything relevant to determining if a person being examined falls within Paragraph 2(10(a) to (c) of Schedule 5.	Persons, vehicles, vessels etc.	Ports and airports

21. Section 60 Criminal Justice and Public Order Act 1994 , as amend by s8 of the Knives Act 1997	Offensive weapons or dangerous instruments to prevent incidents of serious violence or to deal with the carrying of such items	Persons and vehicles	Anywhere within a locality authorised under subsection (1)
---------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------	----------------------	------------------------------------------------------------

Home Office (2005) ‘Stop and search manual,’ London: Home Office.

APPENDIX 2: SUMMARY OF U.S. RACIAL PROFILING STUDIES

Jurisdiction/ Author/ and publication date	Type of agency/ Geographical scope	Why collected	When collected/ Number of contacts	Police behaviour studied	benchmark	Findings and conclusions
California State Highway Patrol 2000	State police/ state wide		01/07/ 1999- 30/04/2000 (10 months) 2, 638,589 contacts	Traffic contacts/ stops and searches	Census data	The results show that CHP do not employ race/ethnicity for enforcement stops.
Cincinnati Police Department Green and Jerome 2002	City police/ City wide	Mandated by a city council ordinance	01/07/2001- 31/12/2001 (6 months) 7,200 traffic stops	Traffic stops, warnings, citations and searches	Adjusted census data and observations	Black drivers are 36% more likely to be stopped than white drivers. Smaller disparities demonstrated in warnings and citations. Authors conclude that the findings are inconclusive and further research is needed.
Connecticut Chief State's Attorney 2001	State and local police State wide	Mandated by legislative act	01/01/2000- 30/06/2000 (6 months) 316,158 stops	Traffic stops, citations, written warnings, searches and drug interdiction.	Census data	Small disparities in stops, larger disparities in searches for blacks and Latino/as. Limited to a few agencies. Conclude – no systematic discrimination.
Denver Police Department Thomas 2002	City police/ City wide	Voluntary	01/06/2001- 31/05/2002 (12 months) Traffic stops 154, 298 Pedestrian stops 41,125	Traffic and pedestrian stops, searches and contraband found	'Mission driven model' based on spatial mapping of non-discretionary arrests, calls for service, victimization data and firearm offences	Officers are only able to pre-determine ethnicity in 8% of traffic stops. Pedestrian stops are conducted on even numbers of whites, blacks and Latino/as. Blacks and Latino/as are over- represented in all types of searches despite lower or roughly equal hit rates.

Las Vegas Metropolitan Police Department McCorkle 2003	City police/ City wide	Mandated by State legislation Prohibiting racial profiling (Assembly Bill 500)	01/01/2002-31/12/2002 (12 months) 182,830 stops	Traffic stops, searches, citations and treatment during the stop	Census data broken down by race and patrol sectors	Blacks are both stopped and searched at twice their percentage of the population. Latino/as are both stopped and searched at rates higher than their population. They were most likely to be stopped during high-discretion stops. Blacks and Latinos also more likely to be handcuffed during encounters.
Maryland State Police Lamberth 1996	State police On I 95 corridor	Data collected for court case	01/01/1995-30/09/1996 (10 months) 1,590 traffic searches	Traffic searches	Observation of drivers using the I 95.	Although blacks made up 17% of the road users they were 70% of all those searched, despite lower hit rates.
Massachusetts Farrell, McDewitt et al. 2004	State wide: State police, 340 municipal police departments, 25 special police units		01/04/2001-30/06/2003 (26 months) 1.6 million traffic warnings and citation	Traffic warnings and citations	Census data, percentage of driving age population	249 Massachusetts law enforcement agencies have substantial disparities in at least one of the following areas: traffic stops, searches, warnings and citations.
Missouri Attorney General	State and local police and Sheriffs		28/08/2000-31/12/2000 (4 months) 453,189 stops	Traffic stops and searches		Data shows clear disparities in stops and searches. 'The data has done nothing to disprove the perception of racial profiling'
New Jersey State Police Venerio and Zoubek 1999	State police Part of the New Jersey Turnpike	Data collected for court case	01/04/1997 – 30/11/1998 (19 months) 87,489 stops	Traffic stops and searches	Observation of drivers using the Turnpike	Blacks make up 40% of the traffic stops despite being 27% of the road users. 80% of searches are conducted on black or Latino/as drivers who together make up 33.9% of the road users. Authors conclude that ethnicity may influence the exercise of discretion in some officers.

New York City Police Department Office of the Attorney General/Spitzer 1999	City police/ City wide	Voluntary	01/01/198-31/03/1999 (15 months) 174,919 stops	Pedestrian stops	Census data broken down by race and patrol sectors	Even when population rates and crime rates are controlled for, minorities were stopped at higher rates than whites in New York City.
North Carolina State Highway Patrol Zingraff, Mason et al. 2000	State police	Voluntary collection in anticipation of mandatory legislation	01/01/ 1998-31/12/1998 651,556 stops	Traffic Stops and searches	Estimated percentage of licences drivers in the district.	Clear disparities. Blacks are more likely to be stopped, issued a citation, given a written warning and searched. The highway patrol found contraband on 26% of blacks and 33% of whites.
Richmond Police Department Smith and Petrocelli 2001	City Police/ City wide	Voluntary	14/02/2000-31/03/2000 (6 weeks) 2,673	Traffic stops, warnings, searches and arrests.	Percentage of driving age population	Minorities disproportionately stopped. No significant differences in searches. Blacks more likely to be warned than arrested. Authors conclude that officers of all races target minorities in traffic stops.
San Diego Police Department (2001)	City Police/ City wide	Voluntary collection in anticipation of mandatory legislation	01/01/2000-31/12/2000 (12 months) 168,901 stops	Traffic Stops, searches and contraband found	Percentage of driving age population	Study shows that Blacks and Hispanics are overrepresented in both traffic stops and subsequent searches
San Francisco Police Department Schlosberg, ACLU 2002	City police	Voluntary	01/07/2001-30/06/2002 (12 months) 50,000 stops	Traffic stops and searches	Census residential population	African-Americans are stopped at twice their representation in the population, while whites are stopped equally to their proportion. African-Americans and Latino/as are more likely to be searched although the police are significantly less likely to find contraband after a search.
San Jose Police Department 2000	City police/ City wide	Voluntary	01/07/1999-30/06/299 (12 month) 97,154 stops	Traffic stops	Census residential population	Latino/as and Blacks disproportionately stopped. This disparity is attributed high police presence in minority neighbourhoods.

St. Paul Police Department Institute on Race and Poverty 2000	City police/ city wide	Voluntary	15/04/2000-5/12/2000 (8 months) 41,249 stops	Traffic stops and searches	Census residential population	Black drivers are stopped in disproportionately high numbers compared to their proportion of the city's population. This pattern occurred in 80 of the 82 census tracts. After being stopped, blacks, Latino/as and Native Americans are subject to both pat down searches of their person and searches of their vehicles at higher rates than searches of white or Asian drivers.
Tennessee Cohen-Vogel and Doss 2002	State wide/ 44 agencies – including state, municipal and Sheriff departments	Mandated by General Assembly legislation (Public Charter 910)	01/01/2001-31/12/2001 (12 months) 450,577 stops	Traffic stops and searches	Census residential population	Officers stop minorities in numbers greater than their proportion in the population. Authors conclude that further research is needed to find an appropriate benchmark.
Texas State Police 2000	State Police/ state wide	Voluntary	01/03/2000-31/07/2000 (4 months) 779,961 stops	Traffic stops, citations, warnings, searches and drug interdiction	Census residential population	No disparities found in stops, warnings and citations issued. Disparities for Blacks and Latino/as in searches and drug interdiction. Authors concluded there is no discrimination in traffic stops.
United States Durose, Schmitt and Langan 2005	Nationwide household survey Any agency	Voluntary	01/01/2002-31/12/2002 (12 months) 80,000 contacts	Any police-public contact	Census residential population	The likelihood of being stopped by a police officer is: whites 8.7%, blacks 9.1% and Latino/as 8.6%. The police are more likely to search minority drivers: white 3.5%, black 10.2% and Latino/as 11.4%. Minorities are also more likely to experience use of force during an encounter.
Washington State Police 2001	State police/ State wide	Mandated by legislative act	01/05/2000-31/10/2000 (10 months) 338, 885	Traffic stops, searches and arrests	Percentage of driving age population and percentage of drivers causing accidents	Minor disparities in percentages of stops, larger disparities in searches and arrests. Authors conclude that more detailed analysis is needed to determine the causes of the disparities.

APPENDIX 3: INTERVIEW AND OBSERVATION BREAKDOWN

Amberham Police Service

Interviews

Code	Force	Area	Rank	Assignment	Sex	Self-defined ethnicity	Age	Length of service (years)
APS/A/DCI/1	Amberham Police Service	A	Detective Chief Inspector	Lead Stop and Search officer	Male	White	42	16
APS/A/PC/2 (double interview)	Amberham Police Service	A	Police Constables		Male	White	41	22
					Male	White	36	3
APS/A/SGT/3	Amberham Police Service	A	Sergeant		Male	White	30	5
APS/A/PC/4	Amberham Police Service	A	Police Constable		Male	White British	37	17
APS/A/PC/5	Amberham Police Service	A	Police Officer		Male	White British	26	1
APS/A/TR/6	Amberham Police Service	A	Police Trainer		Male	Black	36	6
APS/A/PC/7	Amberham Police Service	A	Police Constable		Female	White	22	1
APS/A/SGT/8	Amberham Police Service	A	Sergeant		Female	White	36	15
APS/A/PC/9	Amberham Police Service	A	Police Constable		Female	White	45	2
APS/A/PC/10	Amberham Police Service	A	Police Constable	Young Persons' Officer	Male	White	32	9
APS/B/CSI/11	Amberham Police Service	B	Chief Superintendent	Area Commander	Male	White	55	?
APS/B/SI/12	Amberham Police Service	B	Superintendent	Operations Manager	Male	White	41	19
APS/B/PC/13	Amberham Police Service	B	Police Constable	Crime Fighting Team	Male	White British	22	3
APS/B/PC/14	Amberham Police Service	B	Police Constable	Crime Fighting Team	Male	White British	29	2
APS/B/PC/15	Amberham Police Service	B	Police Constable	Crime Fighting Team	Male	White British	39	8

APS/B/I/16	Amberham Police Service	B	Inspector	Sector Inspector	Male	White	39	16
APS/B/SGT /17 (Triple interview)	Amberham Police Service	B	Sergeant	Crime Fighting Team	Male	White	35	17
			Police Constable		Male	English	24	4
			Police Constable		Male	White	38	5
APS/C/CSI/18	Amberham Police Service	C	Chief Superintendent	Area Commander	Male	White	45	?
APS/C/SGT /19	Amberham Police Service	C	Sergeant	Coordinator/Trainer	Male	White	50	27
APS/C/PC/20	Amberham Police Service	C	Police Constable	Crime Fighting Team	Male	White	30	6
APS/C/SGT /21	Amberham Police Service	C	Sergeant		Male	White	35	15
APS/C/PC/22	Amberham Police Service	C	Police Constable		Male	White	25	2
APS/C/PC/23	Amberham Police Service	C	Police Constable	Local Intelligence Officer	Female	British	37	12
APS/C/PC/24	Amberham Police Service	C	Police Constable	Football intelligence officer	Male	White	44	23
APS/C/PC/25	Amberham Police Service	C	Police Constable	Crime Fighting Team, Bike Patrol	Female	White	31	5

Observations

Code	Force	Area	Shift Observed	Assignment	Officer/s
APS/A/OBS /1	Amberham Police Service	A	2.45pm – 10.30pm	Response	PC, Male, White, 26, 1 year of service PC, Male, White, 29, 3 years of service
APS/A/OBS /2	Amberham Police Service	A	2.00pm – 10.00pm	Response	PC, Female, White, 31, 7 years of service. PC, Female, White, 27, 3 years of service.
APS/B/OBS /3	Amberham Police Service	B	3.00pm – 7.00pm	Special operation	Mixed group of 1 Sergeant and 7 Officers
APS/B/OBS /4	Amberham Police Service	B	5.00pm - 11.00pm	Special operation	Mixed group of 1 Sergeant and 7 Officers
APS/B/OBS /5	Amberham Police Service	B	3.00pm – 9.30pm	ANPR operation	Crime Fighting Team – 1 Sergeant, 4 officers

APS/C/OBS /6	Amberham Police Service	C	3.00pm – 11.00pm	Special operation	Mixed group of 1 Sergeant and 7 Officers
APS/C/OBS /7	Amberham Police Service	C	2.30pm – 10.00pm	Response	PC, Male, Asian, 29, 2 years of service
APS/C/OBS /8	Amberham Police Service	C	3.00pm – 11.00pm	Response	PC, Female, White, 38, 17 years of service PC, Male, White, 25, 2 years of service
APS/C/OBS /9	Amberham Police Service	C	11.00am – 5.00pm	Football Match	Mixed group of officers
APS/D/OBS /10	Amberham Police Service	D	10.00am – 4.00pm	Response	PC, Male, White, 26, 3 year of service PC, Male, White, 23, 1 year of service
APS/D/OBS /11	Amberham Police Service	D	10.00am – 3.30pm	Crime Fighting Team	PC, Female, White, 34, 8 years of service
APS/D/OBS /12	Amberham Police Service	D	3.30pm- 7.00pm	Supervisory shift	Sergeant, Male, White 35, 9 years of service.

Meetings/training attended

Police Authority Public Meeting on Stop and Search, area A.

Public Meeting on Special Operation, area C.

Brookshire Police Service

Interviews

Code	Force	Area	Rank	Assignment	Sex	Self-defined ethnicity	Age	Length of service (years)
BPS/DCI/1	Brookshire Police Service		Chief Inspector	Community Affairs	Male	White	55	29
BPS/SI/2	Brookshire Police Service		Superintendent	Area Operations	Male	White	43	22
BPS/A/SGT /3	Brookshire Police Service	A	Sergeant	Deputy Area Commander	Male	White	47	17
BPS/A/PC/4	Brookshire Police Service	A	Police Constable	Violence and Disorder Team	Male	IC1	37	19
BPS/A/PC/5	Brookshire Police Service	A	Police Constable	Tutor Constable	Male	White European	40	13
BPS/A/TR/6	Brookshire Police Service	A	Police Constable		Male	Sikh	23	1
BPS/A/PC/7	Brookshire Police Service	A	Police Constable	Proactive Team	Male	White South African	25	4

BPS/A/SGT/8	Brookshire Police Service	A	Police Constable	Proactive Team	Male	White European	41	4
BPS/B/PC/9 (Double interview)	Brookshire Police Service	B	Police Constable		Male	IC1	34	1
					Male	British	27	1
BPS/B/PC/10	Brookshire Police Service	B	Police Constable	Local Intelligence Officer	Male	White	39	20
BPS/B/PC/11	Brookshire Police Service	B	Police Constable		Male	White	28	2
BPS/B/SI/12	Brookshire Police Service	B	Police Constable	Tutor Constable	Male	White	35	8
BPS/B/SGT/13	Brookshire Police Service	B	Sergeant		Male	White	34	4
BPS/C/I/14	Brookshire Police Service	C	Inspector	Area Commander	Male	White	41	16
BPS/C/SGT/15	Brookshire Police Service	C	Sergeant	Deputy Area Commander	Male	British Asian	45	13
BPS/C/SGT/16	Brookshire Police Service	C	Sergeant	Proactive Team	Male	White	27	4
BPS/C/PC/17	Brookshire Police Service	C	Police Constable		Male	White	32	6
BPS/D/PC/18	Brookshire Police Service	D	Police Constable		female	White	27	3
BPS/D/PC/19	Brookshire Police Service	D	Police Constable		Male	White	29	23
BPS/D/PC/20	Brookshire Police Service	D	Police Constable		Male	White Irish	25	1
BPS/E/I/21	Brookshire Police Service	E	Inspector	Area Commander	Male	White	52	27
BPS/E/SGT/22	Brookshire Police Service	E	Sergeant		Male	White IC1	37	13
BPS/E/PC/23	Brookshire Police Service	E	Police Constable		Male	White	34	8
BPS/E/PC/24	Brookshire Police Service	E	Police Constable		Male	English/ part Welsh	39	15
BPS/E/SGT/25	Brookshire Police Service	E	Sergeant		Male	White	42	19
BPS/E.PC.26	Brookshire Police Service	E	Police Constable		Female	White	35	1

BPS/F/SGT/27	Brookshire Police Service	F	Sergeant		Male	White Irish	44	10
BPS/F/PC/28	Brookshire Police Service	F	Police Constable		Male	White British	50	7
BPS/F/PC/29	Brookshire Police Service	F	Police Constable		Male	White	31	8
BPS/F/PC/30	Brookshire Police Service	F	Police Constable		Male	IC1	37	3

Meetings/training attended

Stop and search practitioners’ group meeting
Race Policy Advisory Group meeting
Visit to training department

New Town Police Department

Interviews

Code	Force	Area	Rank	Assignment	Sex	Self-defined ethnicity	Age	Length of service (years)
NT/DC/1	New Town Police Department		Deputy Chief	Operations	Male	White	49	26
NT/DC/2	New Town Police Department		Deputy Chief	Detectives Bureau	Male	Black	46	23
NT/DC/3	New Town Police Department		Deputy Chief	Internal Affairs	Male	African American	56	35
NT/A/PO/4	New Town Police Department	A	Police Officer	Bike Patrol	Male	White	28	6
NT/A/PO/5	New Town Police Department	A	Police Officer	Crisis Intervention Officer	Male	West Indian	39	4
NT/A/PO/6	New Town Police Department	A	Police Officer		Female	White	29	4
NT/A/PO/7	New Town Police Department	A	Police Officer		Male	Caucasian	25	2
NT/A/PO/8	New Town Police Department	A	Police Officer	Bike Patrol	Male	Caucasian	32	6
NT/A/SG T/9	New Town Police Department	A	Sergeant		Male	White	40	12
NT/B/PO/10	New Town Police Department	B	Police Officer		Male	White European	38	12

NT/B/PO/11	New Town Police Department	B	Police Officer		Male	White	27	5
NT/B/SG T/12	New Town Police Department	B	Sergeant		Male	White	47	19
NT/B/PO/13	New Town Police Department	B	Police Officer		Female	Caucasian	36	2
NT/B/PO/14	New Town Police Department	B	Police Officer		Male	African American	45	3
NT/B/CAP/15	New Town Police Department	B	Captain	Area Commander	Male	White	43	20
NT/C/LT/16	New Town Police Department	C	Lieutenant		Male	Black	43	16
NT/C/SG T/17	New Town Police Department	C	Sergeant		Male	White	39	9
NT/C/PO/18	New Town Police Department	C	Police Officer		Female	Caucasian	28	3
NT/C/PO/19	New Town Police Department	C	Police Officer		Male	White	34	13
NT/C/PO/20	New Town Police Department	C	Police Officer		Male	Caucasian	26	6
NT/C/PO/21	New Town Police Department	C	Police Officer		Female	Spanish American	26	2

Observations

Code	Force	Area	Shift Observed	Assignment	Officer/s
NT/A/OBS/1	New Town Police Department	A	Swing Shift, 3.00pm – 1.00am	Response	PO, Male, White, 32, 8 years of service
NT/A/OBS/2	New Town Police Department	A	Graveyard shift 11.00pm – 9.00am	Response	PO, Male, White, 35, 6 years of service.
NT/B/OBS/3	New Town Police Department	B	Swing Shift, 3.00pm – 1.00am	Supervisory shift	Sgt, Male, White, 46, 8 years of service
NT/B/OBS/4	New Town Police Department	B	Swing Shift, 3.00pm – 1.00am	Response	PO, Male, White, 29, 3 years of service
NT/C/OBS/5	New Town Police Department	C	Day Shift, 6.30am – 4.30pm	Community Policing Team	PO, Male, White, 33, 6 years of service
NT/C/OBS/6	New Town Police Department	C	Swing Shift, 3.00pm – 1.00pm	Response	PO, Male, White, 27, 5 years of service

NT/GB/OB S/7	New Town Police Department		Swing Shift, 2.00pm – 11.00pm	Gang Bureau - enforcement	PO, Male, African American, 33, 8 years of service.
NT/GB/OB S/8	New Town Police Department		Swing Shift, 2.00pm - 11.00pm	Gang Bureau – investigation	PO, Male, White, 34, 11 years of service
NT/TB/OBS /9	New Town Police Department		Swing shift, 2.00pm – 10.00pm	Traffic Bureau – routine response	PO, Male, White, 42, 15 years of service

Meetings/training attended

Two ‘First Tuesday’ community meetings, Areas B and C.

Eight Citizen Academy classes – Wednesdays 7.00pm – 9.30pm

‘Know your rights’ community meeting, Area B

Multi-cultural Advisory Council meeting

Diversity training course – delivered by 1 trainer to 20 officers from Area A.

Greenville Police Department

Interviews

Code	Force	Area	Rank	Assignment	Sex	Self-defined ethnicity	Age	Length of service (years)
GPD/DC/ 1	Greenville Police Department		Deputy Chief	Administration	Male	Hispanic	49	28
GPD/LT/2	Greenville Police Department		Lieutenant	Administration	Male	White	46	19
GPD/SGT /3	Greenville Police Department		Sergeant	Administrative Assistant to Chief	Male	African American	52	31
GPD/DC/ 4	Greenville Police Department		Division Chief	Patrol Division	Male	White	47	24
GPD/C/5	Greenville Police Department		Command er	Gang Bureau	Male	Hispanic	42	20
GPD/A/P O/6	Greenville Police Department	A	Police Officer		Female	Hispanic	29	6
GPD/A/P O/7	Greenville Police Department	A	Police Officer		Male	White	29	6
GPD/A/P O/8	Greenville Police Department	A	Police Officer		Male	Caucasian	31	9
GPD/A.S GT/9	Greenville Police Department	A	Sergeant		Male	White	35	14
GPD/B/P O/10	Greenville Police Department	A	Police Officer		Male	White	53	28

GPD/A/C/11	Greenville Police Department	A	Captain		Male	White	55	23
GPD/B/P O/12	Greenville Police Department	B	Police Officer		Male	White Irish	55	3
GPD/B/P O/13	Greenville Police Department	B	Police Officer		Male	White	50	35
GPD/B/L T/14	Greenville Police Department	B	Lieutenant		Female	Caucasian	43	21
GPD/B/S GT/15	Greenville Police Department	B	Sergeant		Male	White	48	17
GPD/B/P O/16 (Triple interview)	Greenville Police Department	B	Police Officers	Neighbour-hood Policing Team	Male	White	33	6
					Male	White	29	6
					Male	White	35	9
GPD/C/L T/17	Greenville Police Department	C	Lieutenant		Male	White	50	21
GPD/B/P O/18	Greenville Police Department	C	Police Officer		Female	White	38	3
GPD/C/S GT/19	Greenville Police Department	C	Sergeant		Male	Caucasian	50	30
GPD/C/P O/20	Greenville Police Department	C	Police Officer		Male	Caucasian	59	33
					Male			
GPD/C/C OR/21	Greenville Police Department	C	Corporal		Male	White	40	13
GPD/C/C OR/22	Greenville Police Department	C	Corporal		Male	White	46	14
GPD/C/S GT/23	Greenville Police Department	C	Sergeant	Special Crime Attack Team	Male	Black	38	13
GPD/C/S GT/24	Greenville Police Department	C	Sergeant	Special Crime Attack Team	Male	Hispanic	46	23
GPD/C/P O/25	Greenville Police Department	C	Police Officer	Community Resource Officers	Male	Irish Anglo	43	15
GPD/C/P O/26 (Double interview)	Greenville Police Department	C	Police officers	Special Crime Attack Team	Male	White	33	4
					Male	White	42	18

Observations

Code	Force	Area	Shift Observed	Assignment	Officer/s
GPD/A/OBS/1	Greenville Police Department	A	Swing Shift, 3.00pm – 11.00pm	Response	PO, Male, White, 37, 11 years of service
GPD/A/OBS/2	Greenville Police Department	A	Day Shift, 10.30pm – 4.30pm	Response	PO, Female, White, 48, 23 years of service
GPD/B/OBS/3	Greenville Police Department	B	Day Shift, 7.00am – 2.00pm	Response	PO, Male, White, 26, 3 years of service
GPD/B/OBS/4	Greenville Police Department	B	Swing Shift, 3.00pm – 11.00pm	Response	PO, Female, White, 33, 3 years of service.
GPD/C/OBS/5	Greenville Police Department	C	Swing Shift, 3.00pm – 11.00pm	Response	Sgt, Male, White, 46, 8 years of service
GPD/C/OBS/6	Greenville Police Department	C	Swing Shift, 11.00am – 11.00pm	Special Crime Attack Team	PO, Male, White, 43, 5 years of service PO, Male, White, 32, 9 years of service
GPD/D/OBS/7	Greenville Police Department	D	Swing Shift, 2.00pm – 10.30pm	Response	PO, Male, White, 43, 12 years of service.
GPD/D/OBS/8	Greenville Police Department	D	Graveyard Shift, 10.00pm - 6.00am	Response	PO, Male, White, 28, 4 years of service
GPD/E/OBS/9	Greenville Police Department	E	Swing shift, 10.00pm – 6.00pm	Special Crime Attack Team	PO, Male, White, 29, 7 years of service

APPENDIX 4: INTERVIEW SCHEDULES

UK interview schedules - Officers and Sergeants

Personal Characteristics

- Age:
- Sex:
- Ethnicity:
- Rank:
- Role:
- Length of time in the force:

Area

- 1. Which beat do you patrol?
- 2. How long have you patrolled that beat?/ How long have you supervised that beat?
- 3. What is the profile/ population of that beat?
- 4. What are the major crime problems in that area?
- 5. What is the quality of life issues in that area?
- 6. What is the relationship between the police and the community like in that area?
- 7. Do you enjoy working this beat?

Stop and search use

- 8. How often do you use a s.1 stop and search per shift? How many times a week?/ How often do your officers use stop and search per shift?/ Per week?
- 9. How often do you use voluntary stop and searches? How many times a week?
N/A
- 10. In general, how useful do you find stop and search? Why do you say this?
- 11. Which crimes is it most effective for and which crimes is it least effective?
- 12. Within your beat, are there particular locations or times of the day you find stop and search is used most often? Why is this?
- 13. Have you been involved in section 60 stop and search in this area? Can you describe the circumstances? How long did the operation last and how many stops and searches did you carry out? Was it effective?
Additional question: Have you been involved in the *** (Special Operation) patrols?/ Have you been involved in supervising the *** (Special Operation) patrols?
- 14. What do you consider the main problems (if any) with the use of stop and search?

Practice/ suspicion

- 15. Can you talk me through a typical stop and search?
- 16. How do you decide which persons to stop and search? Can you talk me through the factors you take into account?
- 17. What in your opinion makes a good stop and search?

18. What in your opinion makes one officer better at using stop and search than another officer?

Recording

19. What are your current practices as regards to recording stop and searches?

Which ones do you record?

20. Do you think 'encounter recording' (recording all stops) is a positive development? Has it impacted on your use of stop and search?

21. Which forms do you use? Are these adequate for their purpose?

Additional question (for Sergeants): Do you think there is a problem with under-recording?

22. How is ethnic data recorded? Are you comfortable with this? Does it create problems?

23. What happens to the forms? How are they used for intelligence?

Public reaction

24. How does the public react to the request to be stopped and searched?

25. Does this vary according to the type of person?

26. Do you find that in general those who are stopped and searched are aware of their rights?

Supervision/Training

27. Can you describe for me how your use of stop and searched is supervised?/ How do you supervise your officers use of stop and search?

28. Who is responsible for this?

29. Have you received any training on the use of stop and search over the past 3 or 4 years (since the Macpherson Report was published)? Can you describe what that training has involved?/ Have you received any training on supervising your officers' use of stop and search over the past 3 or 4 years (since the Macpherson Report was published)? Can you describe what that training has involved?

30. What diversity training have you received over the last 3 or 4 years? Was it useful? How has it impacted on your use of stop and search?

31. Do you think that local policy on the use of stop and search or the way it is supervised has changed in that period? If so, how?

32. Have you been involved in any discussions with more senior officers in your area about the policy on stop and search? Or with community representatives? If so, when was this and what was discussed?

Is there any thing else you would like to say?

Thank you

US interview schedules - Officers and Sergeants

Personal Characteristics

Age:

Sex:

Ethnicity:

Rank:

Role:

Length of time in the force:

Area

- 1. Which area do you patrol? /Which unit do you work in?**
- 2. How long have you patrolled that area?**
- 3. What is the profile/ population of that area?**
- 4. What are the major crime problems in that area?**
- 5. What are the quality of life issues in that area?**
- 6. What is the relationship between the police and the communities in that area?**
- 7. Do you enjoy working this beat/unit?**

Stop and search/frisk use

- 8. How often do you stop pedestrians? How many times a week or per shift?/ How often do the officers that you supervise stop pedestrians? Per week/per shift?**
- 9. What are the most common reasons for stopping people?**
- 10. How many traffic stops do you make? How many times a week or per shift?/ How often do the officers that you supervise make traffic stops? Per week/per shift?**
- 11. What are the most common violations you stop vehicles for?**
- 12. Within your area, are there particular locations or times of the day you find stop and search is used most often? Why is this?**
- 13. In general, how useful do you find your powers to stop and search people and vehicles? Why do you say this?/ How important is stop and search as a crime fighting tool?**
- 14. What do you consider the main problems (if any) with the use of stop and frisk? Traffic stops?**

Practice/ suspicion

- 15. Can you talk me through a typical pedestrian stop and frisk?**
- 16. How do you decide which persons to stop and search?**
- 17. What factors would you take into account when deciding when to frisk?**
- 18. How much does the area influence this?**
- 19. What sort of behaviours are you looking out for?**
- 20. What in your opinion makes a good stop and search?**
- 21. What in your opinion makes one officer better at using stop and search than another officer?**

Public reaction

- 22. How does the public react to being stopped and frisked? Or having their car searched?**

23. Do you find that in general those who are stopped and searched are aware of their rights?
24. How often do people consent to have their car searched? How often does force have to be used?
- Additional question: How often do you find stuff?
25. How often do you have cause to handcuff someone you have stopped? What factors would lead to this?

Recording

26. What are your current practices as regards to recording stop and searches?
27. Did you participate in the *** data collection effort in ***?
28. What are your thoughts on this? Would you be happy to collect stop data in the future?

Supervision/Training

29. Can you describe for me how your use of stop and searched is supervised?/ How do you supervise your officers' use of stops?
30. What training have you received recently on stop and search and racial profiling? How useful was it? / What training have you received on supervising your officers' use of stop and search and addressing racial profiling?
31. What diversity training have you had?

Is there any thing else you would like to say?

Thank you

APPENDIX 5: U.S. JUDISPRUDENCE ON STOP AND SEARCH

Non-seizure/ consensual encounters

In *Ohio v. Robinette*, 117 S. Ct. 417 (1996), the Supreme Court rules that it was not essential for an officer to tell a person that he was ‘free to go’ after issuing a citation in order to continue as a ‘consensual encounter’ as opposed to a seizure.

In *U.S. v. Buchanan*, 72 F. 3d 1217, 1223 (6th Cir. 1995) the court held that examples of circumstances that might indicate a seizure, even if the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person or the use of language or tone of voice indicating that compliance with the officer’s request might be compelled.

In *California v. Hodari D.*, 111 S. Ct. 1547 (1991), a group of youth including Hodari fled at the approach of an unmarked police car. An officer wearing a jacket with ‘police’ on it gave chase. The officer took a roundabout route as a result; Hordari looked over his shoulder and almost ran into the officer. At this point Hordari threw down a rock of cocaine and tried to escape. The officer tackled him and retrieved the rock. The court said that when Hordari threw down the rock he was not seized because in order to be seized there had to be a) application of force however slight by the officer or b) submission to the officer’s show of authority. The officer displayed authority by chasing Hordari and commanding him to stop but Hodari did not submit.

In *Florida v. Bostick*, 111 S. Ct. 2382 (1991), the Supreme Court made a distinction between a consensual encounter and an investigative detention. Police on a drug task force approached Bostick, where he was sleeping at the back of a bus. They asked for identification, his bus ticket and permission to search his luggage. He gave consent and they found drugs. Officers concede that they had no individual suspicion concerning Bostick when they approached him.

The court said that a consensual encounter does not trigger Fourth Amendment scrutiny. The question is whether a reasonable person would feel free to decline the officer’s request or otherwise terminate the encounter. The subject motivations of the officer are irrelevant. The court also said the ‘reasonable person’ standard presupposed a reasonable ‘innocent’ person not a ‘guilty’ one and so rejected Bostick’s argument that he must have been seized because no reasonable person would consent to a search which would turn up proof of his guilt.

This rationale was followed in *Allen v. City of Portland*, 73 F.3d 232 (9th Cir. 1995), where the court stated ‘the proper focus in determining whether an arrest or detention occurred is not on the subjective belief of the police... but whether a reasonable innocent person would not have felt free to leave after brief questioning.’

U.S. v. White, 81 F. 3d 775 (8th Cir. 1996) and *U.S. v. Lambert*, 46 f.3d 1064 (10th cir. 1995) both noted ‘a seizure does not occur simply because an officer approaches a person to ask a few questions or even requests to search an area even if the officer has no reason to suspect the person provided, provided the officer does not indicate that compliance with his request is required.’

Stop and frisk/ Investigative detention

In *Terry v. Ohio*, 392 U.S. 1 (1968) that a police officer could stop (conduct an investigative detention where the suspect was not free to leave) a person based on 'articulable and reasonable suspicion' that the person 'is committing, has committed or is about to commit a crime,' even where there is NOT probable cause for an arrest.

In *Sibron v. New York*, 392 U.S. 40 (1968) ruled that if there was reasonable suspicion in addition to that which justifies the stop which causes you to believe the suspect might be armed, you can pat down clothing for weapons. Just because a 'stop' is legal and based on reasonable suspicion doesn't automatically mean that a frisk is also acceptable.

In *Adams v. Williams*, 407 U.S. 143 (1972) the court rules that during a 'Terry stop' a police officer can lawfully require a person to identify themselves, without violating a person's Fourth Amendment rights.

In *U.S. v. Vanicromanee*, 742 F.2d 349 (7th Cir. 1984) the court held that mere detention is not an arrest; a police officer may detain an individual briefly in order to determine his identity momentarily while obtaining more information if the officer has articulable facts sufficient to give rise to reasonable suspicion that the person has committed a crime.

What constitutes a 'stop' as opposed to a 'non-seizure'?

The *Hodari D.* and *Bostick* cases define what constitutes a pre-stop or pre-seizure. A *Terry* stop is a form of seizure where the person is not free to go. Drawing the line between a *Bostick* encounter and a *Terry* stop is done on a case by case basis.

In *U.S. v. Glass*, 128 F.3d 1398 (10th Cir. 1997) had some factors that courts typically use to determine whether a police-citizen interaction constitutes a seizure. These factors include:

- a) Telling a person that he is a suspect in a crime
- b) The number of officers that are present
- c) Moving the conversation from public to private place or whether the contact is in a public or private place
- d) Whether the person is told that he need not talk to the officers
- e) Whether the person's entrance was blocked

Other examples can be found in: *U.S. v. Kim*, 27 F.3d 947 (3rd Cir. 1994), *U.S. v. Cardoza*, 129 F.3d 6 (1st Cir. 1997), *U.S. v. Rodriguez-Franco*, 749 F.2d 1555 (11th Cir. 1985), *Lopez v. Garriga*, 917 F.2d 63 (1st Cir. 1990) and *U.S. v. Torres-Guevara*, 147 F.3d 1261 (10th Cir. 1998).

What constitutes 'reasonable suspicion'?

There is no precise, universal definition of reasonable suspicion. Reasonable suspicion remains defined by various courts so standards differ greatly. Officers are required to know the views of the vast majority of courts about the factors that may indicate reasonable suspicion and factors which have little or no support for reasonable suspicion or probable cause.

In *U.S. v. Perrin*, 45 F. 3d 869 (4th Cir. 1995) the court held that ‘reasonable suspicion’ is a less demanding standard than probable cause not only because reasonable suspicion can be established with information that is less in quantity than that required to show probable cause, but also from information that is less reliable than needed for probable cause.

In *Ornelas v. U.S.*, 116 S.Ct. 1657 (1996) police in Milwaukee who were trained in drug interdiction saw an 1981 Oldsmobile with California licence plates in a motel parking lot. The police checked the registered owner and learned from the DEA that he was on the NADDIS (DEA Computer) as a ‘suspected’ drug trafficker. Police learned from the motel staff that Ornelas and another man checked in at 4am without reservations. Police also knew that older model GM cars have large spaces in the doors and other locations. The Supreme Court said that these facts constituted reasonable suspicion. The court said that although the mosaic which is analysed for reasonable suspicion is multi-faceted and one determination will seldom be a useful precedent for another, a court should look at all the precedents in making decisions. The court should determine the specific facts of the case and then make a legal decision as to whether the facts satisfy the Constitutional standard.

Nervousness

In *U.S. v. Wood*, 106 F 3d 942 (10th Cir. 1997) the court rules that ‘we have repeatedly held that nervousness is of limited significance in determining reasonable suspicion and that the government’s repetitive reliance on the nervousness of either the driver or passenger as a basis for reasonable suspicion in all cases of this kind must be treated with caution.

In *U.S. v. Peters*, 10 F. 3d 1517 (10th Cir. 1997) the court ruled that ‘it is common knowledge that most citizens, whether innocent or guilty, when confronted by a law enforcement officer who asks them potentially incriminating are likely to exhibit some signs of nervousness.’ Similar ruling was made by *U.S. v. Beck*, 140 f. 3d 1129 (8th Cir. 1998)

In *U.S. v. McRae*, 81 F. 3d 1528 (10th Cir. 1996) the court held that nervousness along with other objective factors may contribute to reasonable suspicion.

Refusal to cooperate

In *Florida v. Bostick*, 111 S.Ct 2382 (1991) in addition to holding that the encounter was a non-seizure, that the suspects refusal to cooperate with the police (i.e. answer questions or consent to search) would NOT have given the police reasonable suspicion to seize the subject or search his luggage. Similar decisions by federal and state courts include: *U.S. v. Fletcher*, 91 F 3d 48 (8th Cir. 1996). *U.S. v. Torres*, 65 F. 3d 1241 (4th Cir. 1995) and *Gasho v. United States*, 39 F. 3d 1420 (9th Cir. 1994).

Officers' observations

In *U.S. v. Cortez*, 449 U.S. 1 (1981) the Supreme Court held that even 'innocent' actions when viewed by police officers who have knowledge of the modes and patterns of certain types of criminal activities can give reasonable suspicion. 'A trained officer draws inferences from data that might well elude an untrained person... The test for reasonable suspicion is NOT weighted in terms of library analysis by scholars.'

In *U.S. v. Mattarolo*, 191 F. 3d 1082 (9th Cir, 1999). Late at night an officer on a dark, secluded road saw a pickup truck in the driveway of a fenced construction storage area, with a closed gate. The truck left the driveway with a crate in the back despite the fact that the business was closed. The officer stopped the truck. The court held that 'the officer has an objective basis for his suspicions based on all the circumstances. It is not a matter of hard certainties, but of probabilities. This requires more than an officer's hunch but a preponderance of the evidence to show proof of wrong doing is not required at this stage. Reasonable suspicion therefore can arise from information different in quality and content and even less reliable than required for the establishment of probable cause. The officer's training and experience are factors to consider in determine if the officer's suspicions were reasonable.'

Similar decisions were reached in *U.S. v. Sholola*, 124 F 3d 803 (7th Cir. 1997), *U.S. v. Lujan*, 188 F. 3d 520 (10th Cir. 1999), *U.S. v. Lender*, 985 F. 2d 151 (4th Cir. 1993) and *U.S. v. Quinn*, 83 F. 3d 917 (7th Cir. 1996).

Unprovoked flight

In *Illinois v. Wordlaw*, 528 U.S. (2000), the majority of the Supreme Court held that a person standing in an area known for narcotics trafficking, by that fact alone would not be subject to a *Terry* stop. If that person flees upon seeing the police without provocation, that person can be stopped. Thus flight, along with other factors can support reasonable suspicion.

Similar decisions were made in *State v. Stinnet*, 104 Nev. 398 (1988) and *U.S. v. Jackson*, 175 F. 3d 600 (8th Cir. 1999).

What forms the basis to 'frisk'?

A frisk can only be done if the officer suspects the presence of a weapon, not for any other items or contraband. The right to frisk does not automatically accompany the right to stop. (This is opposite of 'search incident to arrest' rule, in which a search automatically accompanies any lawful custodial arrest). However, if the frisk is performed with reasonable suspicion present but after the police remove the item that they suspected was a weapon, it turns out not to be a weapon but other illegal item, this search and seizure is still valid.

In *Sibron v. New York*, 392 U.S. 40 (1968) and *Ybarra v. Illinois*, 444 U.S. 85 (1979) the Supreme Court ruled that the general rule is that a frisk is not justified because the stop is justified. The officer has to point to particular facts that made him think the suspect may be armed.

Similar decisions have been made in *Adams v. Williams*, 407 U.S. 143 (1972), *U.S. v. Mattarolo*, 191 F. 3d 1082 (9th Cir. 1999), *U.S. v. Sinclair*, 983 F. 2d 598 (4th Cir. 1993), *U.S. v. Gibson*, 64 F. 3d 617 (11th Cir. 1995), *U.S. v. Taylor*, 162 F. 3d 12 (1st Cir. 1998), *U.S. v. Raymond*, 152 F. 3d 309 (4th Cir. 1998), *U.S. v. Edwards*, 53 F. 3d 616 (3rd Cir. 1995) and *U.S. v. Brown*, 188 F. 3d 860 (7th Cir. 1999).

‘Plain Feel’

In *Minnesota v. Dickerson*, 113 S.Ct. 2130 (1993), the ‘plain feel’ case, police were on patrol at night near an apartment building known for drug trafficking. Police had served several drug search warrants at that building and citizens had complained about drug dealing in the hallways. Dickerson was observed leaving the building and walking towards the car, upon seeing the police he turned and walked the other way and entered an alley. Officers made a *Terry* stop on Dickerson and also frisked him. While frisking Dickerson, one officer felt something in his pocket which the officer slid around and manipulated and then removed a plastic bag containing 1/5 gram of rock cocaine.

The court held that assuming that there is a legal stop and legal frisk and during the frisk the officer feels an item that is not a suspected weapon, then if it is IMMEDIATELY apparent from the mass and contour that the item is probably contraband, the officer can legally seize it (without having to rely on search incident to arrest). In *Dickerson* the court rules that the rock of cocaine would have to be suppressed because the officer continued feeling and frisking AFTER the officer had concluded there was no weapon in the pocket.

Plain feel means immediately apparent. Most State Supreme Courts have adopted the same rule.

Length and scope of detention

In *U.S. Sharpe*, 105 S.Ct. 1586 (1985), the court held that a *Terry* stop is a temporary detention (as opposed to an arrest) and that the scope was lawful as long as the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly.

In *U.S. v. Owens*, 167 F. 3d 739 (1st Cir. 1999) the court rules that a 50 minute detention of driver and passenger after the stop of the automobile for speeding was not so long as to convert investigative stop to de facto arrest.

Most courts have ruled that investigative stops can last up to one hour.

Use of handcuffs or weapons in detention

Many cases have held that the displaying of weapons and handcuffing suspects does not in itself convert a detention into an arrest but officers must be able to articulate why these means were employed. Courts have accepted factors such as suspicion of a violent crime, detention at night, isolated area, lone officer and risk of flight. See *U.S. v. Bautista*, 684 f. 2d 1286 (9th Cir. 1982), *U.S. v. Blackman*, 66 F. 3d 1572 (11th Cir. 1995) and *U.S. v. Tilmon*, 19 F. 3d 1221 (7th Cir. 1994).

In *State v. Braxton*, 495 A. 2d 273 (1985) and *U.S. v. Cannon*, 29 F. 3d 472 (9th Cir. 1994), courts ruled that placing a suspect in a car did not equal an arrest.

In *U.S. v. Merritt*, 695 F. 2d 1263 (10th Cir. 1982), the court held that pointing a gun at a suspect stopped on reasonable suspicion of criminal activity does not turn an encounter into an arrest requiring probable cause. A pick-up truck believed to contain a murder fugitive and 2 other persons was surrounded by at least 12 officers, and at least three had guns pointed at the suspects. The court ruled that this show of force was not unreasonable considering the potential danger that the officers faced.

There have been many similar rulings. In *U.S. v. Roper*, 702 F. 2d 984 (11th Cir. 1983) case involved a bail jumper, *U.S. v. Taylor*, 857 F. 2d 210 (4th Cir. 1988) case involved a *Terry* stop on a person that the police knew had been convicted for assault with intent to murder and robbery, and *U.S. v. Cole*, 70 F. 3d 113 (4th Cir. 1995) the police suspected that car occupants had a large amount of drugs and might be armed.

Arrests and probable cause

In *Hayes v. Florida*, 470 U.S. 811 (1985) the Supreme Court said that although there is no 'bright line rule' to distinguish between a stop and an arrest, at some point in the investigation police procedures can become so qualitatively and quantitatively intrusive regarding a suspect's freedom of movement and privacy that an arrest occurs.

An arrest is only legal if made on the basis of probable cause. The U.S. Supreme Court says that probable cause is a term dealing with everyday probabilities, not legal technicalities. In *Draper v. United States*, 358 U.S. 307 (1959), the Court stated 'whether a man of reasonable caution would believe an offence was being or had been committed' not a question of the 'good faith' of the officers but a need to articulated facts causing reasonable belief. The 'objective test' is used to determine whether and when an arrest occurs. A court may consider that there was an arrest even though the suspect was not told 'you are under arrest.' Factors such as a show of authority, involuntary restraint or movement and passage of time are considered.

In *U.S. v. Ornelas*, 116 S. Ct. 1657(1996), the court ruled that articulating precisely what constitutes reasonable suspicion and probable cause is not possible. They are common sense, technical conceptions that deal with 'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.' They continue, 'as such, the standards are not readily, or usefully, reduced to a neat set of legal rules. We have described reasonable suspicion as a particularised and objective basis for suspecting the person stopped of criminal activity, and probable cause to search as existing where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found.'

In *U.S. v. Covarrubias*, 65 F. 3d 1362 (7th Cir. 1995) the court held that 'police have probable cause to arrest if at the moment of the arrest the facts and circumstances within their knowledge of which they had reasonably trustworthy information were sufficient to warrant a prudent person in believing that the suspect had committed an offence. While probable cause requires more than mere suspicion, we do not require it to reach the level of virtual certainty.'

In *Brinegar v. U.S.*, 338 U.S. 160 (1949) the court held that probable cause requires less than (the amount of) evidence that would justify a conviction but more than mere suspicion.'

In *U.S. v. Oscampo*, 937 F. 2d 485 (9th Cir.1991) the court held that 'probable cause evaluation depends on the totality of the facts (of the case) even though there is an innocent explanation for each fact.'

Preserving probable cause

Frequently a police officer stops (or arrests) a person for a small offence and then continues the investigation and finds probable cause for a major crime. In such cases the officer doesn't charge the person with the initial, sometimes petty, offence.

In *Scott v. State*, 110 Nev. 622 (1994) the defendant was in a car stopped for an improperly affixed license plate. After the stop it was determined that Scott was an ex-felon and had a gun. He was arrested for that but no citation was issued. The court said this made no difference to the validity of the stop. In *U.S. v. Woody*, 55 F. 3d 1257 (7th Cir. 1995) the court said, 'an arrest may be perfectly reasonable even if the police officer ultimately does not charge the suspect with the offence giving rise to the officer's probable cause determination.'

Pretext stops

On *Whren v. U.S.*, 166 S.Ct. 1769 (1996), the Supreme Court rules that a police officers' motives or subjective thoughts are irrelevant if the officer has a legal basis for the stop.

There are few federal and state cases on pretext stops and the decisions there are on this subject are conflicting. The two forces visited in this study have adopted the principle developed in *Whren*.